IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PLASTRONICS SOCKET PARTNERS, LTD., AND PLASTRONICS H-PIN, LTD., PLAINTIFFS,	)(	CIVIL ACTION NO. 2:18-CV-14-JRG-RSP
VS.	)(	MARSHALL, TEXAS
DONG WEON HWANG, HICON CO. LTD., DEFENDANTS.	)(	JULY 10, 2019 12:50 P.M.

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Defendants, are you prepared to call your next witness?

MS. DERIEUX: We are, Your Honor.

THE COURT: All right. Let's bring in the jury, please?

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Welcome back from lunch, ladies and gentlemen. Please be seated.

Defendants, call your next witness.

MS. DERIEUX: Defendants call Dr. James Woods.

THE COURT: All right. Dr. Woods, if you'll come forward and be sworn, please.

(Witness sworn.)

THE COURT: Please come around, sir. Have a seat on the witness stand.

MR. JONES: Your Honor, permission to pass out the binders?

THE COURT: Yes.

MR. JONES: Thank you.

THE COURT: All right. Ms. DeRieux, you may

proceed with your direct examination.

MS. DERIEUX: Thank you, Your Honor.

JAMES WOODS, Ph.D., DEFENDANTS' WITNESS, SWORN

DIRECT EXAMINATION

BY MS. DERIEUX:

Q. Dr. Woods, please introduce yourself to the jury.

A. A little housekeeping. Just a second.

Good afternoon. My name is James D. Woods. I'm a principal with Economic Analytics Consulting in Houston, Texas.

I live in Houston with my wife and my two young adult children. My daughter -- they both go to Texas A&M. My daughter is studying public health, and she just finished her freshman year. And my son just finished his junior year, and he's in the Corps of Cadets, and he hopes to get a contract with the Marines to be a Marine aviator.

THE COURT: Pull the microphone a little closer to you, please, Dr. Woods.

Q. (By Ms. DeRieux) Without diving into the details of your analysis, what are you here to testify about today?

A. I'm here to testify about damages in this matter. I'm going to provide my opinions about Mr. Perry's report, Mr. Perry's opinions, and the damages that are suffered by Plastronics assuming liability and the damages that were suffered by Mr. Hwang.

Q. Are you being compensated for your time that you've spent on this case?
A. Yes, I am. My firm receives $495 an hour for the time I spend on this matter.
Q. Does your compensation depend on the outcome of the case in any way?
A. It does not.
Q. You said you were here to testify about Plastronics's damages. Does that mean Plastronics should win on its claims?
A. No. Just like Mr. Perry's testimony previously, as a damages expert, I have to assume liability in order to calculate damages. And so that's the assumption that I hold. I don't have an opinion one way or the other.
Q. What qualifies you as an expert in damages, Dr. Woods?
A. I have experience, education, and training in economics and finance, and for over 20 years, I've helped clients in settings like this, in litigation settings, provided my opinion on damages, as well as working for clients to value intellectual property used in -- in licensing negotiations or for strategic purposes.
Q. Have you created a slide presentation to help us understand your analysis?
A. I have.
MS. DERIEUX: Could we have Slide No. 2, please?

Q. (By Ms. DeRieux) What education do you have that contributes to your expertise in damages?
A. I have an undergraduate degree from the University of Missouri Columbia, an MBA from the University of Missouri St. Louis, and a doctorate degree in finance from Texas A&M University.
Q. Please describe the types of courses you've taken.
A. I have advanced training in microeconomics -- macroeconomics, econometrics, statistics, operations management, and -- and accounting.
Q. Where do you currently work?
A. Currently I work at Economic Analytics Consulting.
Q. And what do you do there?
A. Economic Analytics Consulting has three primary lines of business. The first is working with, you know, lawyers or clients on intellectual property that's in a dispute, like today. The second deals with economic impact studies. And the third is a general economic advisory practice.
Q. Can you tell us what an economic impact study is, Dr. Woods?
A. Sure. When people visit a community -- they don't live there, but they go there, they bring their money. Now, when they bring their money, they spend the money in that community. And my firm calculates the economic impact of that money. We -- we figure out how much money they bring

to the community, how they spend that money in the community, and then how that money affects the community.

And so the -- the -- a simple example of an economic impact study would be for the Super Bowl. My firm did the economic impact study for Houston's 2017 Super Bowl. And we also just recently finished an economic impact study for the Houston Livestock Show and Rodeo.

Q. What other kinds of works do you do -- work do you do for the Economic Analytics clients?

A. We also have a general economic advisory practice where we'll do pricing studies, where we'll provide strategic -- help them with strategic decisions like doing a SWOT analysis you may have heard of.

Also, we do a thing called a royalty investigation or a royalty audit, and that's where we're hired by somebody that has an agreement with another party, and they're licensing the technology, and money is being paid for the use of the technology.

My firm is engaged to examine the books and records and the products and information to determine if the correct amount of royalties are being paid.

Q. What kinds of clients are you typically engaged by?

A. The clients range from all the different sizes. Sometimes we're hired by individual inventors, people just starting out, all the way up to Fortune 100 clients. So,

for example, a few years ago, Nortel was a big client of ours.

Q. Please describe your experience working with licenses for patents.

A. So I'm not a lawyer, so I'm not hired to actually negotiate a licensing deal, but I am an economist. And so I'll be hired by either the lawyers or one of the parties that are negotiating to provide help about the economic terms of the contract.

I may be asked to help them determine the royalty rate, or I may be consulted with to determine the language of the agreement to make sure that the parties get -- accomplish their economic goals.

Q. Have you ever testified in a court such as this about damages before today?

A. Yes, I have. I've testified -- I think it's 15 times on a wide variety of matters. A few of them are contract matters. The bulk of them are intellectual property, either patents or trademarks, or something like that.

Q. Do you have any relevant finance experience outside of your work with Economic Analytics?

A. Yes. Over the last 12 years, I've been an adjunct professor of finance at the University of Houston. I teach financial statements analysis, primarily to the MBAs and the master students.

Q. And are you currently teaching a class?
A. I -- right now it's the summer session semester, so I don't have a class, but I'm scheduled to teach in the fall.
MS. DERIEUX: Your Honor, at this time, we'd proffer Dr. Woods as an expert on damages.
THE COURT: Is there objection?
MR. BEAR: No objection, Your Honor.
THE COURT: Without objection, the Court will recognize the witness as a designated witness -- or excuse me -- as an expert in the designated field.
Go ahead, Counsel.
MS. DERIEUX: Thank you, Your Honor.
Could we get Slide No. 3, please?
Q. (By Ms. DeRieux) Dr. Woods, can you please summarize the conclusions that you've reached in this case?
A. Yes. It is my opinion that in this case, lost profits is not an economically fair measure of damages and that if HiCon infringed the '602 patent, damages are best measured by a reasonable royalty of 622 -- $622,606.00 and that Mr. Hwang is owed $1,361,860 in royalty for the Plastronics's use of the technology described in the '602 patent.
Q. In reaching these conclusions, did you perform all of the work relating to the analysis by yourself?
A. No, I did not. Economic Analytics Consulting, I had

three other people that helped me go through the large volume of information in this case.

MS. DERIEUX: Can we have Slide 4, please?

Q. (By Ms. DeRieux) How did you go about your work?

A. So in general, working on a case like this involves five steps. They're -- they're not necessarily done completely, start it, finish it, and then goes on to the next, but, generally speaking, it progresses through a predictable path.

You start by gathering the facts, and then you move on to taking those facts and analyzing them in a framework along with some kind of assumptions.

And in this case, the next step was to evaluate and analyze and understand Mr. Perry's opinions. Then I -- I -- based on all of that information, I formed my opinion of the damages for Plastronics.

And then finally, I switched the emphasis and flipped around to look at the damages that were due to Mr. Hwang under the Royalty Agreement.

MS. DERIEUX: Slide 5, please?

Q. (By Ms. DeRieux) What does the first step, fact-finding, include?

A. As I was mentioned, fact-finding is trying to gather all the relevant information. And this is something that continues on throughout the entire process.

But it typically begins with reading the pleadings, understanding what the litigation is from the -- from the filings with the Court, and reading depositions, understand what other testimony has been provided before today, and then once again, reviewing a large number of documents that have been produced in the case, and then conducting interviews and -- and finally independent research, things that my -- myself and my team has done to gather information that's not necessarily in the record.

Q. Who -- you said you did some interviews. Who did you interview?

A. I interviewed Mr. Schubring, Mr. K.T. -- J.T. Kwon and Mr. Hwang.

Q. And that was the Mr. Schubring that testified earlier in this trial?

A. That's correct.

Q. And Mr. Hwang, who also has -- the jury's heard his testimony as well?

A. That's correct.

Q. Why did you think it was important to talk to Mr. Schubring?

A. So from my previous work on other cases, I was aware of testing of semiconductors. I was aware -- I didn't know all the different types of pins, but I understand what semiconductor -- how they were packaged and I understood the

need to test these products.

And so I had a basic idea that there had to be some kind of socket that held the IC while it was being tested. But, you know, that -- that was kind of the extent of my knowledge.

And so in order to understand this market, as an economist, I had to start by gathering information, and one of the things I thought was really important was to talk to somebody that was knowledgeable in the market, and Mr. Schubring was available for my interview.

Q. You also mentioned Mr. Hwang and Mr. Kwon. What did you -- what information or fact-finding were you doing when you interviewed them?

A. So for Mr. Hwang, he provided a lot of information or the same types of information as Mr. Schubring did from his perspective. So it was -- it was a way to cross-reference and ask better questions by understanding what Mr. Hwang thought of the marketplace as well.

And then Mr. Kwon provided information about HiCon Limited's financial statements and inside information about the products, as far as what the -- what the ratio is of pins to sockets and their sales.

Q. Did you take any steps to verify the information that you received from Mr. Schubring, Mr. Hwang, and Mr. Kwon?

A. Definitely. I've been doing this for a long time, and

efficiency and -- and learning and, you know, valuing people's time is really important. And it's also, you know, quality control.

And so for every interview that I do, before I begin the interview, I have my own fact-finding. And so I either research on the Internet or research in the documents or whatever. I gather information and kind of form the questions.

You never know where the interview is going to go because I don't know what he's going to say, but I have a framework that I'm starting with of information. And then as I'm asking questions and he's providing information, I can look at my framework and say, does it match what I think, or do I need to probe differently, or is there something -- miscommunication?

And so that process continues as I'm going through the interview process. And so I get a general feel of am I communicating with the person I'm interviewing, and is the information they're providing reliable?

Q. Did you talk to any Plastronics personnel?

A. No, I did not. But I did interview -- did attend the deposition of Mr. Furman and Mr. Pfaff.

Q. And have you been in the courtroom during the whole trial of the case so far?

A. Yes, I have.

Q. And you've heard all the witnesses that have testified up to today?
A. I have.
Q. Did you read the Royalty Agreement between Mr. Hwang and Plastronics?
A. Several times.
Q. Have you also read the Assignment Agreement between Mr. Hwang and Plastronics?
A. Yes.
Q. And have you looked at the '602 patent?
A. Yes, I have.

MS. DERIEUX: May I have Slide 6, please?

Q. (By Ms. DeRieux) Can you explain the timeline of important events that led up to this case?
A. Yes. I -- I -- earlier in the opening statement, you -- you were shown a -- a timeline of significant events, and I don't need to go through all of these, but I wanted to put on the slide of the relevant time periods for the damages so you can have a perspective of how it all fits together.

You know, the case begins back in 2004 when Mr. Hwang invents the technology that ultimately -- ultimately becomes the '604 [sic] patent or the H-Pin.

But the damages period begins January 19 of 2012 for the patent damages calculations, and for the contracts, which includes the royalty, it begins two years later, on

January 19th of 2014.

MS. DERIEUX: Slide 6 -- excuse me -- Slide 7, please.

Q. (By Ms. DeRieux) What is the second step of your analysis?

A. So the second step has to do with the framework and assumptions, and so the general assumptions are the most important. So I have to assume that the '602 patent is valid, I have to assume that HiCon Limited sales infringes the '602 patent, Mr. Hwang breached his contracts with Plastronics, and that the Plastronics H-Pin breached its contract and its royalties to Mr. Hwang.

Q. Have you made an assumption about who is selling the HiCon pins in the United States?

A. Yes. I understand, for there to be patent infringement damages, HiCon Limited -- what we were calling HiCon Limited, has to be the entity selling the products into the United States, and so that's my assumption.

MS. DERIEUX: Slide 8, please.

Q. (By Ms. DeRieux) What is the third step of your analysis?

A. The third step is to analyze and understand Mr. Perry's opinions.

Q. And do you agree with Mr. Perry's conclusions?

A. I do not. Mr. -- Mr. Perry stated that he believed that

lost profits was the fair measure of damages in this case, and I do not believe that that's true. I believe that Mr. Perry's but-for analysis is flawed and that he improperly analyzed what we'll call the Panduit factors.

And I also believe that the correct measure of damages will be a reasonable royalty.

Q. Let's start with Mr. Perry's lost profits theory.

What are lost profits, Dr. Woods?

A. So the concept of lost profits is that if a -- a defendant infringes a patent or breaches a contract and that breach causes the plaintiff to lose sales, then you would say that there's -- that those sales led to the plaintiff losing profits, and that -- that's the calculation of lost profits.

Q. Do you agree with Mr. Perry that lost profits is an appropriate measure of damages here from an economic perspective?

A. I do not.

Q. Why not?

A. From an economic perspective, in order to have lost profits, the analyst has to show what's been called but-for. And but-for means that the Plaintiff would have made those sales but-for the actions of the Defendant.

Q. What methods did you use to determine whether Plastronics would have made HiCon Limited sales but for the

alleged bad acts?

A. So the -- the but-for test -- you can satisfy the but-for test. It can be tested, or it can be analyzed by using what's called the Panduit factors. And the Panduit factors are a set of four factors that are both economically important and have a basis in prior cases that relate to calculating lost profits in contract and patent damages cases.

MS. DERIEUX: May I have Slide 9, please?

Q. (By Ms. DeRieux) Is the Panduit case a well-established method for analyzing lost profits?

A. Yes, it is.

Q. And could you just list for us what those factors are?

A. Yes. So in order to conclude that the Plaintiff would have made the sales but-for the Defendants' bad action, the analyst has to conclude four things.

He has to conclude that there's demand for the patented product, that there's no availability non-infringing substitutes that could be sold by anybody else to satisfy the needs of the -- the Defendants' customers.

You have to establish that the Plaintiff has both the manufacturing and marketing capacity in order to make the sales that were made by the -- the Defendant.

And finally, you have to be able to accurately

calculate the profits that were lost due to those lost sales.

Q. Did Mr. Perry perform a proper Panduit analysis?

A. No, I do not believe that he did.

MS. DERIEUX: Slide 10, please.

Q. (By Ms. DeRieux) Can you explain, to begin with, what this first factor requires?

A. Yes. The first factor is demand for the patented product. We need to be able to show that -- the analyst needs to be able to show that there's demand for the product that's covered under the patent in order to begin the Panduit analysis.

MS. DERIEUX: Slide 11, please.

Q. (By Ms. DeRieux) What was your conclusion on the -- on that first factor?

A. In this case, the -- the patented product is the H-Pin, and both Plastronics and HiCon sell H-Pin -- they sell H-Pins, and so it's pretty clear that there is demand for the patented product because people are buying the H-Pins.

But that's not -- that's not where the analysis ends because while the factor is just demand for the patented product, this is also a launching point for the rest of the Panduit analysis because the question becomes, well, the products contain many features other than the patented feature of the '602. So the question becomes what

other factors of the product drove demand. Did customers buy things just because of the patent, or did they buy thing -- the products for other reasons?

MS. DERIEUX: Slide 12, please.

Q. (By Ms. DeRieux) On the second of the Panduit factors, what does the second factor look at?

A. So the second factor is this -- is absence of non-infringing alternatives. And the idea here is we're going to -- we're going to look at a marketplace, and we're going to take out the Defendants' sales. And the question is, is there anything else that could have been sold in place of the Defendants' products other than the Plaintiffs' product.

MS. DERIEUX: Slide 13, please.

Q. (By Ms. DeRieux) What is the first step in analyzing what would happen if HiCon Limited could not sell its pins?

A. As an economist, the first thing that -- that we do when we start talking about the sale of products and changes and consumer preferences and things like that is to define the market. You have to have a general idea of what the marketplace is so we can have an organized discussion of what would happen when we change that marketplace.

Q. What methods do economists typically use to define a market?

A. So generally speaking, an economist can define a market

in two ways. It can be defined quantitatively or it can be defined qualitatively.

Q. What does Mr. Perry say about the market in his analysis?

A. Mr. Perry -- if I understand his testimony correctly even today, Mr. Perry does not define the market. He does not do a quantitative analysis, which would be giving information about products and prices and trying to determine what happens when you change a product to see -- when you change a price to see what happens with the other products.

I'll give you a simple example. We know that the price of strawberries goes up. So the price of strawberries goes up, what happens to the sale of raspberries? If the price of strawberries going up makes you buy more raspberries, they would say that product -- that people consider strawberries and raspberries substitutable. They're -- they're in competition. That's a -- that's a quantitative analysis.

Mr. Perry doesn't -- doesn't do that.

There's also a thing called qualitative analysis, and a qualitative analysis is gathering information in a different way. It's about asking questions and -- and analyzing the information from those questions.

So, for example, if you were -- wanted to

understand the market for travel and you said I want to know -- I want to know what the market looks like for traveling 700 miles in one day. Well, yeah, you could drive, but more likely than that, you're going to fly. And so if you're interested in understanding that market, almost for sure airlines are going to be the products that compete in the marketplace because each airline is a substitute for the other.

But in a qualitative analysis, you can see already when it gets a little hard to understand what you're talking about, because even with an airlines, there could be some differences to account for because some people might think that United doesn't compete with Southwest. They're both airlines, but they're somewhat different. And so you have to understand the differences between the airlines to understand -- some differences in the airlines and the differences in the customers to understand how they compete.

Q. So what did Mr. Perry say about who competes in the market for H-Pins?

A. Mr. Perry con -- concludes that -- that there is a market for H-Pins, it's a two-player market, and that that's the only thing that he needs to be concerned about in his but-for analysis.

Q. Did Mr. Perry perform either a quantitative or a qualitative analysis of this market?

A. He -- he did not perform a quantitative analysis for sure. I -- I don't believe that he formed a qualitative analysis either, but he may differ with me on that.

Q. Is there qualitative information available to support Mr. Perry's conclusion about the market that H-Pins are sold into?

A. Could you re-ask that question, please?

Q. Yes. Does the qualitative information available support Mr. Perry's conclusions about the market that H-Pins are sold into?

A. No, it does not.

Q. Why not?

A. Because there's a lot of information that indicates that there's more competitors in this marketplace, other than just HiCon and Plastronics.

Q. What is usually the next step after you identify the relevant market?

A. Once you identify the relevant market, you list the competitors and start to figure out how they compete and how they're -- they would change if one was removed from the marketplace.

Q. Who did Mr. Perry list as competitors?

A. Mr. Perry only considers HiCon and Plastronics.

Q. How did he determine that only HiCon and Plastronics were the relevant competitors?

A. I believe he relied on statements from Mr. Pfaff and Mr. Furman, and I also believe that from -- from his testimony, he believes -- he appears to understand that customers may reveal a preference for a product by their purchasing decisions, and, therefore, in -- in this case, since customers bought the H-Pin, the only thing they would buy is an H-Pin because that's what they indicated that they bought.

Q. Under Mr. Perry's view of the market, if HiCon Limited could not sell its pins, who would -- who would compete with Plastronics?

A. Under -- under Mr. Perry's view of the world, the only alternative would be Plastronics.

Q. If Mr. Perry doesn't define the market, how can he figure out who the competitors are?

A. I -- I believe he -- he either relies on the testimony from Mr. Pfaff and Mr. Furman or he uses this revealed preference framework.

Q. Is revealed preference a term that economists use?

A. They do. Revealed preference is a -- a very famous area of economics where economists have spent a lot of time determining under what circumstances consumers actually reveal their preferences based on their purchasing behavior.

MS. DERIEUX: Next slide, please.

Q. (By Ms. DeRieux) Can you explain for the jury how

revealed preference theory works?
A. Yes, I can. And I think we have a -- the next slide as -- as an example.

So if -- if you believe that a customer was interested in an import car, and so there are imports and they're considering buying a Honda Civic -- next slide -- no, next -- there you go -- and -- but somebody said that they can't buy the Civic for -- for whatever reason, would you believe that their revealed preferences of buying an import car indicates that they would buy a Ferrari? Probably not because there's a huge pricing difference between a Ferrari and a Honda Civic. More likely than not, the revealed preferences indicate that they'd buy something closer to a Corolla which is priced similarly -- similarly to a Civic.
Q. Are there other factors, other than price, that would factor into a revealed preference theory analysis?
A. Yes. Anytime you do a revealed preference analysis, and this is what makes revealed preference difficult to use, is to isolate the effect of one preference, you have to control for all the other different aspects of the product. Otherwise you don't know what you're measuring and what you're -- and what you're concluding is driving the product decision.

MS. DERIEUX: Next slide, please.

Q. (By Ms. DeRieux) What factors did you observe in the burn-in and testing markets that you would need to control for in a revealed preference analysis?

A. So there's probably dozens or maybe -- or maybe a dozen factors. But ones that I have to talk about today are specifically price, quality, and lead time. And these seem to be the ones that have been mentioned most in the trial and are the easiest to get a handle on because everyone understands price.

Quality is difficult to understand, but it ranges anywhere from does the product actually accomplish what it's supposed to accomplish or does the product, you know, look nice, does it last a long time, does it have other quality features?

And then, finally, it's important in most environments, most -- most corporate testing environments -- you know -- you know, when you go to buy a car, oftentimes you don't care whether the car is delivered today or tomorrow or next week because you just need the car.

But in these industries, there's a multi-step process, right? I'm -- I'm buying these products to -- to do this testing and get online in time to bring my product to market. And so the lead time that's provided by the suppliers -- all the suppliers is really important. And so that's another aspect that you need to control for in the

decision-making process.

Q. What would happen if you used the revealed preference approach without controlling for these other factors?

A. So let me give you a little more complicated example to understand -- to help you understand why revealed preference can be difficult to use, and it's -- it's another car example.

You -- you may know that Audi sells cars in the United States. All Audis that are sold in the United States are four-wheel drive vehicles. In Europe, they sell two-wheel drive, but in the United States they only sell four-wheel drive vehicles.

And so someone could look at this and say, oh, when an American purchases an Audi, they've revealed their preference for four-wheel drive. So you might -- you might draw the conclusion that if Audi left the U.S. market, all Audi buyers would buy four-wheel drive vehicles, or they'd buy a Jeep or something like that.

We know that that's -- we know that that's not true because I think if you -- if you look at cars, you can see that Audis are a combination of performance, entertainment systems, quality leather, German engineering, lots of other features. And more likely than not, if Audi is not available in the States, these people did not reveal their preference for four-wheel drive, they revealed their

preference for maybe German engineering so maybe they buy a Mercedes or maybe they buy a BMW or maybe the smaller luxury cars, and they buy a Cadillac.

So since these products have multiple futures and multiple items drive the decision-making, trying to understand what would happen when you change just one feature can be difficult.

Q. So in your opinion, does Mr. Perry incorrectly use the revealed preference theory?

A. Yes, I think he does.

Q. What about complexities in the customers' purchasing decisions for products containing H-Pins, would you need to control for those complexities?

A. Yes. I -- I think that it's been made clear by Mr. Furman and by Mr. Schubring and Mr. Hwang that the decision-making process that goes into the selections of these products is complex. And people -- the customers make the decision of which product they're going to purchase based on a number of factors. And so if you're trying to figure out what a customer would do, if you remove their ability to buy an H-Pin, you'd have to control for these other factors in order to get the right conclusion.

Q. Did Mr. Perry control for any variables in his revealed preference theory?

A. Mr. Perry does not control for any variables. He just

concludes that if a customer bought an H-Pin and could not buy that H-Pin from HiCon, he would buy the H-Pin from Plastronics.

Q. Did Mr. Perry discuss the effect of prices for products in this market?

A. No. Mr. Perry testified that he -- that he didn't know what the prices were. And that's a big problem in the case -- in a case like this, as cited in my example previously. And we also have information from Mr. Furman that he believes that HiCon's prices are -- are less expensive or lower than Plastronics's prices.

And I've seen in the record that Mr. Pfaff indicated that they were up to 30 percent lower, so that's a significant pricing difference and that pricing difference would affect any kind of revealed preference analysis.

Q. Would it even be possible to use revealed preference in a market as complex as this one?

A. I mean, I think you probably could. I think you could develop questionnaires and -- and isolate the various factors -- various competitors in the marketplace, and -- and determine what customers are revealing in their preferences buying different products. But it would be very difficult.

Q. Does Plastronics face competition from firms other than HiCon Limited?

A. Yes. I think today, you've heard -- today and yesterday you've heard a lot of information to indicate -- indicating that Plastronics faces competitors -- many competitors.

Q. Does Plastronics face competition from others that are selling sockets with H-Pins?

A. Yes. It was -- I'm trying to remember the witness -- you heard earlier that Plastronics sells the H-Pins to Sensata. And then Sensata takes those H-Pins and puts it in their socket, which indicates beyond -- beyond doubt that Plastronics faces competitions for -- competition for H-Pin products from HiCon and at least Sensata.

Q. So in your opinion, is Mr. Perry's two-player conclusion correct?

A. No, I think it's -- there are -- there are other reasons. We'll talk about them in a few minutes, but just on its face, we know for sure that this is not a two-player market because Plastronics sells socket -- sells H-Pins to other socket manufacturers that then put those pins in their socket which creates competition for Plastronics.

Q. Is there any information that Plastronics competes with pins other than HiCon Limited's pins?

A. Yes, there is. We've heard testimony about the type of pin that the H-Pin is. It's a stamped spring pin and that there -- Mr. Schubring explained earlier today that there are many companies that make stamped spring pins, and all of

these are in competition with the H-Pin.

MS. DERIEUX: Slide 16, please.

Q. (By Ms. DeRieux) Who are the competitors who are listed here on Slide 16?

A. I mentioned previously I conducted interviews. Early in my work on the case, I interviewed Mr. Schubring and Mr. Hwang, and one of the focuses of my interview was what's -- what's the competition look like? If somebody could not buy an H-Pin, just period, could not buy an H-Pin, what products would they purchase or what products would they consider and why would they consider those?

And Mr. Hwang and Mr. Schubring identified -- identified nine companies that he -- that they both believe provide products that are competitive to H-Pins and would be considered if HiCon's products were not on the market.

So they mentioned Ardent Concepts, Enplas Corporation, IWIN Solutions, Micro Contact Solutions, OKins Electronics Company, Sensata, Veeco, Xcerra, and Yamaichi Electronics. And you may remember most of those were mentioned just recently by Mr. Schubring.

Q. Did you find any information that Plastronics believed it had competitors other than HiCon Limited?

A. Yes, I did. I saw in the record emails and at least one PowerPoint presentation where Plastronics outlines the competition it faces.

MS. DERIEUX: Next slide, please.

Q. (By Ms. DeRieux) If you would take a look at DX-403. And what does this email tell us about the competitors in the H-Pin market?

A. So this email is -- is from David Pfaff to Mr. Hwang, and it's dated June 22nd, 2011. And Mr. Pfaff is explaining that he's thinking about exploring a lawsuit with ECT, but he's not going to pursue it right now, which indicates that he believes that ECT --

MR. BEAR: Objection. Improper expert testimony about the state of mind of Mr. Pfaff.

THE COURT: Overruled.

A. I believe it indicates that ECT has a product that is similar enough to the H-Pin to be potentially infringing the '602 patent, which implies that it would be similar enough to be in competition with the H-Pin.

And then the next paragraph, the fourth paragraph down, he says that, you know, he would like to explore more detail how we can dominate, him and Mr. Hwang, but the important sentence comes next.

All the spring pin companies are coming out with stamped spring probes. That matches and correlates with the testimony provided by Mr. Schubring that there are many stamped spring probes that can compete with the H-Pin and that if you say in the marketplace that we remove HiCon's

products, you cannot automatically conclude that all sales would go to Plastronics.

MS. DERIEUX: Next slide, please.

Q. (By Ms. DeRieux) What does DX-058 here on your screen tell us about what Plastronics believed about the competition in the market?

A. This email is similar to the previous one. It provides a little more detail. It's from David Pfaff to -- to Mr. Hwang, also. And it's dated March 12th, 2010.

And it appears that Mr. Pfaff is coming back from a show -- it's a trade show -- and he mentions that Foxconn, ECT, MJC, Yamaichi, Enplas, Aries all have stamped contacts with springs.

And I think this is referring to the other email. Says: Only the ECT one looks like infringement. So it must be the closest to the H-Pin. But he's mentioning that all of these suppliers have products that are stamped spring probes, which indicates that they are likely in competition with Plastronics's H-Pin.

And interesting, also, he mentions that LEENO has a small Pogo Pin, a very, very small Pogo Pin. And that is one of the advantages of the H-Pin is it's very, very small. And so he's also indicating that that he's at least concerned about LEENO's very small Pogo Pin.

And he continues on to say that it's urgent that

they license a competitor company to get the H-Pin in production -- I believe to get the H-Pin in production, so it can compete with other stamped steel springs.

MR. BEAR: Objection. The witness is speculating, Your Honor.

THE COURT: Well, he's an expert witness. He's entitled to offer an opinion.

Is your objection, Counsel, that the opinion offered is not disclosed in his report, or is it that he doesn't have the ability to -- to offer an opinion as to this matter?

MR. BEAR: I believe both, Your Honor. I believe it's for the jury to determine the intent of this email, not for an expert to tell them what Mr. Pfaff intended.

THE COURT: So you're telling me that you believe that that opinion is outside the scope of what's disclosed in his expert report?

MR. BEAR: Yes, Your Honor. And I also believe it's improper testimony.

THE COURT: All right. Ladies and gentlemen, this is a matter that I'll have to resolve outside of your presence. I'm going to ask you to close your notebooks, follow all my instructions, and retire briefly to the jury room. I'll have you back as soon as I can get this resolved.

The jury is excused at this time.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Be seated, please.

Ms. DeRieux, do you believe there's support within the expert witness's report for the opinion testimony called for by your questioning, given by his answer, and if so, can you clarify where in the report you believe that support exists?

MS. DERIEUX: Yes, Your Honor. It's in his rebuttal report at Page 13, Notes 19 and 21.

And I know that -- that it's a reference to Bates numbers rather than this exhibit number because at the time the exhibits weren't numbered, but those are the references to DX-058 that we're relying on.

THE COURT: What's your response to that, Mr. Bear?

MR. BEAR: Your Honor, I believe that this crosses the territory into not having support. Just because he cites an email or a piece of evidence in his report doesn't mean that he is authorized to testify about the subjective intent of another fact witness, and I think it's improper for an expert to opine.

I think it is proper for him to talk about competitors, but when he says, Mr. Pfaff intended X, Y, or Z

on an email, I think that's improper, and I think it broaches the province of the jury.

THE COURT: Well, you told me that the objection was rooted in your belief that the opinion offered by the witness was outside the scope of his expert reports. That's why I sent the jury out.

MR. BEAR: I understand.

THE COURT: If that's not the basis of your objection, then you need to clarify that for me now.

MR. BEAR: It's a two-part. That's what I just said.

And also I don't think that there was any disclosure that Mr. Pfaff's subjective -- that he was testifying as to Mr. Pfaff's subjective intent in the report.

So, I mean, I -- I think it -- I didn't see anything in the report that indicated he was going to talk about, you know, a -- a fact witness's intent in sending an email.

THE COURT: Well, quite honestly, I think your objection that it's outside the scope of the report is not well-founded. Your better objection is that it calls for speculation beyond the stated area of expertise of this witness.

Do you have a response to the speculation

objection, Ms. DeRieux?

MS. DERIEUX: I believe Dr. Woods was drawing a conclusion based on David -- David Pfaff's written position as revealed in his own words in this email that he wrote to Mr. Hwang.

THE COURT: Can you put the email back on the screen for me?

All right. Considering the evidence before me, I'm going to overrule the objection. I think the question calls for and the answer given addresses more of what is contained within DX-058 than subjectively speculating about the underlying intent of the author, Mr. Pfaff.

So the speculation objection is overruled. The outside the scope of the expert's report objection is overruled.

Let's bring the jury in.

MR. BEAR: Thank you, Your Honor.

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Thank you for your indulgence, ladies and gentlemen of the jury. Please be seated.

For the record, the objection is overruled.

Proceed with either the completion of this answer or your next question, Ms. DeRieux.

MS. DERIEUX: Let's call up Slide 19, DX-441,

please.

Q. (By Ms. DeRieux) Dr. Woods, did you review any internal Plastronics documents that mentioned competitors?

A. Yes, I did. This is a Plastronics internal document from 2011 where Plastronics is explaining or looking at its main competitors, and you can see that they mention the competitors that we've been talking about previously. They mention Yamaichi, Enplas, Sensata. And then under others, they have Foxconn and a company called OTAX. I don't think that was on the list before. And there's some other niche players with products like Plastronics.

It's also important to note the relative size of the competitors that they're displaying on the screen here. Yamaichi has $250 million. It's $250 million in sales. So they're much, much larger, probably over ten times larger than Plastronics.

Q. Has there been any testimony from any Plastronics employees that indicated Plastronics competes with products other than HiCon pins?

A. Yes. Mr. Furman indicated that Plastronics competes against Yamaichi, Enplas, and Sensata but mentioned that the pins are included -- H-Pins are included in Sensata's products.

Q. How does Mr. Perry include this information in his analysis?

A. As I discussed before, Mr. Perry doesn't include this information at all. He ignores it.

Q. What kind of analysis would be needed for a market with more than two players?

A. So anytime you have more than two players and you're doing a lost profits analysis, you're removing one of the players, but if there's more than two, then that means, when you review one, you still have two.

So you have to take the Defendants' sales and allocate those sales among the remaining participants in the marketplace. And that can be done in multiple ways, but one way is to simply look at the market's share of the competitors and say, well, if they're the biggest supplier in the marketplace, they get the bigger amount of sales.

There are other more qualitative ways to do it, too, but no matter what you do, you have to -- if there are more than two players in the marketplace and you remove one, you have to allocate those sales among the remaining competitors with some kind of market share or some kind of analysis.

Q. Has Mr. Perry presented any kind of market share analysis like you described?

A. He has not.

Q. Based on your analysis of the second Panduit factor, have you come to a conclusion about lost profits?

A. Yes. That lost profits is not a fair measure of damages in this case primarily so far because there is -- you cannot show an absence of non-infringing substitutes. Therefore, you cannot conclude that the but-for test is met and that lost profits is the proper measure of damages.

MS. DERIEUX: Slide 20, please.

Q. (By Ms. DeRieux) What is the third Panduit factor?

A. So as we work -- walk through these, if you believe that the first two are satisfied, the first two Panduit factors are satisfied, then the next one to look at would be to determine if the Plaintiff had the capacity to manufacture and market the -- the number, the type of products that were sold by the Defendant so that the Plaintiff could essentially step into the shoes of the -- the Defendant in your but-for world.

Q. Whose marketing -- marketing capacity are we looking at here, Plastronics H-Pin or Plastronics Socket?

A. It would be Plastronics H-Pin.

Q. Why -- why H-Pin and not Socket?

A. Because it's my understanding that Plastronics H-Pin holds the patent and holds the contract that -- that's at issue in this case; therefore, that is the party that is trying to recover its lost profits.

Q. And who does Plastronics H-Pin sell to?

A. As -- as you heard earlier, Plastronics H-Pin sells pins

only to Plastronics Socket Partners.

MS. DERIEUX: Slide 21, please.

Q. (By Ms. DeRieux) Have you seen any information that Plastronics H-Pin conducts any marketing?

A. Plastronics H-Pin has no employees -- or it -- it doesn't conduct any marketing, and in the but-for world, it would have no ability to market products because its only customer is Plastronics Socket.

Q. So is there information that Plastronics H-Pin has the marketing capacity to make HiCon Limited sales?

A. No, there's no information to support that conclusion.

Q. What does manufacturing capacity mean?

A. So manufacturing capacity is exactly what it sounds like. Does -- do the Plaintiffs have the ability to physically manufacture the type and quantity of products that would be necessary to satisfy the needs of the Defendants' customers?

MS. DERIEUX: Slide 22, please.

Q. (By Ms. DeRieux) What was your conclusion about Plastronics's H-Pin manufacturing capacity to make H-Pins?

A. And -- and so I believe you heard when Mr. Perry was testifying that -- that we -- we know that Mr. Furman testified that Plastronics H-Pin could make more pins. But we don't know exactly how many more pins they could make.

But we also don't know how many pins they would

need to make in order to satisfy HiCon's customers' needs because it's never been disclosed how many pins HiCon customers needed.

Q. If Plaintiffs are seeking lost profits on sockets, do they also have to show capacity to manufacture sockets?

A. Yes. If Plastronics H-Pin is going to collect damages on the lost profits sales, it would need to be able to manufacture sockets. And as was explained previously, Plastronics H-Pin does not manufacture sockets.

Q. What is your conclusion about whether Plastronics H-Pin has the necessary manufacturing capacity to make the sockets?

A. Plastronics H-Pin does not have manufacturing capacity to make sockets. So, therefore, it could not have the capacity.

Q. Even if we consider Plastronics Sockets instead, have you seen any information about Plastronics Socket's manufacturing capacity to make the number of sockets sold by HiCon Limited?

A. Even if we look at Plastronics Socket Partners, it's the same problem as what we discussed for H-Pins. While we have some information that Plastronics Socket Partners could make more sockets, there's no information available of how many sockets they would need to make in order to satisfy the needs of HiCon's customers. So you can't conclude that

Plastronics Sockets has enough manufacturing capacity to meet the sales.

Q. Did Mr. Perry analyze any information about the number of sockets Plastronics Socket could manufacture?

A. He did not.

Q. Did you see any information about whether Plastronics could manufacture the kinds of pins and sockets that HiCon Limited sold?

A. No. There's -- there's no information about the specific kinds of sockets that HiCon's customers needed or wanted and whether or not Plastronics could actually make those sockets.

Additionally, you heard earlier that HiCon makes three different types of pins. There's different tops on the pins. And that's what HiCon's customers are buying.

There's no information in the record that indicates that Plastronics H-Pin could manufacture those specific types of pins.

Q. Does Mr. Perry determine if Plastronics could have made sockets that were acceptable to HiCon Limited's customers?

A. He does not.

Q. Did you review Plastronics's sales records in connection with analyzing Plastronics's manufacturing capacity?

A. Yes. There was information provided in Mr. Furman's testimony, as well as information provided by Mr. Perry,

that indicates that Plastronics believes that it could sell two to three times its level of sales in order to meet HiCon's needs.

MS. DERIEUX: Slide 23, please.

Q. (By Ms. DeRieux) This is DX-041. Is this a copy of Plastronics's sales information that you reviewed?

A. This is a copy of information that I and Mr. Perry both reviewed.

Q. And what does this document show?

A. This is -- this is a multi-page document that indicates the financial statements or the detailed financial records of Plastronics H-Pin and Plastronics Socket Partners.

Q. Did Mr. Perry provide a summary of Plastronics's financial information?

A. Yes. In the process of doing his work, he provided several summaries. But one of them will be helpful to understand and evaluate this concept of three times the level of sales capacity for Plastronics.

MS. DERIEUX: Slide 24, please.

Q. (By Ms. DeRieux) What did Mr. Pfaff tell Mr. Perry about Plastronics's manufacturing capacity?

A. So Mr. Pfaff told Mr. Perry that Plastronics could sell three times the level of sales during the damages period.

Q. Can you explain how you used Plastronics sales numbers to determine manufacturing capacity?

A. Yes. And so the only information that I -- was available to me about their manufacturing capacity was the level of sales that -- that they could accomplish. And so Mr. Perry provided the -- the summary that's on the screen now indicating -- indicating that during the damages period, Plastronics sold $56,491,995.00 worth of sockets -- pins and sockets. That was their sales during the damages period.

And the damages period is -- on the slide here is 6.75 years. And so if you divide 56.5 by 6.75, you get approximately $8.4 million. So that's on -- that's on average during the damages period what Plastronics's sales were per year.

And so Mr. Pfaff said that they could do three times that amount, which means we multiply the 8.4 by 3, and you get 25.1.

Q. Does $25.1 million per year indicate that Plastronics had enough capacity to make all of its sales and all of HiCon Limited's sales?

A. It does not.

MS. DERIEUX: Slide 25, please.

If you would, clear the screen so the jury -- yes -- can see the document.

All right. Slide 25.

THE WITNESS: Sorry to erase the whole screen.

Q. (By Ms. DeRieux) Okay. Can you explain your analysis

here on -- on this chart -- using this chart?
A. Yes, I can. So this chart takes some of the information from the previous screen and so forth. For 2015 through 2018, it shows Plastronics's sales. And then next to it, it has HiCon sales during those same years. And it works across from there, but I'm going to -- I'm going to start by looking at just one year.

So if you look at 2015, Plastronics sold $8.2 million worth of products, and HiCon sold 32.9. So almost $33 million worth of sales.

So in order to make both its sales -- Plastronics's sales and HiCon's sales, in 2015, Mr. Perry needs to conclude that Plastronics could sell $41,244,589.00 worth of products.

But as I described previously, based on the statements from Mr. Pfaff that their capacity is three times their level of sales, their sales capacity is only $25,107,553.00. And that means that Mr. Perry's calculating lost profits damages on $16,117,036.00 more than Plastronics could have actually produced by Mr. Pfaff's statements. And that leads to Mr. Perry overstating damages by $6,333,995.00.

MS. DERIEUX: Slide 26, please.
Q. (By Ms. DeRieux) After analyzing the third Panduit factor, what is your conclusion about lost profits?

A. So Mr. Perry cannot conclude that -- cannot establish the but-for conditions have been met, so, therefore, lost profits is not a fair measure of damages.

And clearly, the market is not a two-player market. We know for sure it's at least a three-player market, but most likely there may be more than three players. There may be as many as 12.

And then, finally, Plastronics can't show that the correct entities had the right -- had enough manufacturing and marketing capacity in order to make the sales.

Q. Up to this time we've been talking about the Panduit factors, but other than the Panduit factors and establishing that but-for causation, is there other economic -- economically relevant information to consider about whether the lost profits were caused by the alleged bad acts?

A. Yes. So Plastronics might not have made sales for a wide variety of -- wide variety of reasons, such as its prices are too high, its -- quality doesn't match expectations, or does not -- doesn't have the ability to meet the lead times that are necessary in the market.

Q. Did you see any information in this case that HiCon Limited's acts did not cause Plastronics's claimed lost profits?

A. I observed some emails that indicate that that may be the case.

MS. DERIEUX: Slide 27, please.

Q. (By Ms. Derieux) Take a look at DX-065. What does this -- what does this email tell you about Plastronics's ability to compete on the basis of price?

A. And so this email is from -- I think it's Justin Lawrence at Micron to Larry Furman at Plastronics from August 25th of 2009. And Mr. Lawrence is explaining that they can't justify paying more for a socket that does the same job as the current solution. In other words, he is saying that if they -- if Plastronics wants Micron to consider its products, it needs to lower its price by 20 to 25 percent just to be considered.

And then Mr. Lawrence goes on to reiterate that it doesn't make sense, you know, to pay more for a socket unless you get significant performance improvements. And this goes back to this complicated nature of the -- the products. You can't conclude that price is the only thing that drives sales or that performance is the only thing that drives sales. It's a combination of the two.

MS. DERIEUX: Slide 28, please.

Q. (By Ms. DeRieux) What does this email, DX-350, tell you about Plastronics's ability to compete on the basis of price?

A. And once again, this email provides information that Plastronics's prices may be too high at some times. It's an

email from Mr. Brown at NW Test Solutions, which it's my understanding that NW Test Solutions buys products from other -- from many different vendors and -- and re-sells those products either on the board or individually.

And the -- the email is from Mr. Brown to Mr. Furman. And in the highlighted section, it says: There -- I believe they're talking about Micron again, that Micron was paying 20 to $30.00 per elastomer. That's a type of socket. And that these elastomer sockets has 200 pins, and they're buying the quantities of 50 to a hundred sockets at a time and that Plastronics and NW Solutions can't compete with -- with that price point.

Q. Did you see any other information that Plastronics had higher prices than its competitors?

A. Yes. As I mentioned before, earlier in the trial, Mr. Furman testified that it was his understanding that Plastronics's prices -- that HiCon's prices are 30 percent lower than Plastronics's prices -- I'm sorry, Mr. Furman said they were lower. And Mr. Pfaff said previously that they were 30 percent lower.

Q. What does this information show you about whether Plastronics's lost sales were caused by HiCon Limited's alleged bad acts?

A. It -- it's possible that HiCon's [sic] inability to sell is related to things other than HiCon's sales.

Q. Did you see any information that shipping times were important?

A. I did.

MS. DERIEUX: Slide 29, please.

Q. (By Ms. DeRieux) What does the email in DX-443 tell you about the importance of delivering a product on time in this market?

A. So this is an email from Mr. Pfaff to Mr. Durrett, D-u-r-r-e-t-t, who's also a Plastronics employee. It's from November 26th of 2012. And there -- there -- from their email chain, I think they're discussing a business plan or business opportunity.

They're -- they're talking about, in the highlighted section, that Plastronics's pricing in Taiwan is higher than competitors'. And they also mention that delivery time is -- is important -- at least -- at least if you commit to a delivery time, actually making that commitment is really important, especially in the -- in the Asian market.

Q. What does this information show you about whether Plastronics's lost sales were caused by HiCon's activities?

A. It provides information that there may be other factors at play beyond HiCon's conduct -- alleged bad conduct in this case.

MS. DERIEUX: Slide 30, please.

Q. (By Ms. DeRieux) What is the last Panduit factor?
A. And the last Panduit factor is the calculation phase. And if you believe that the other three are met, you still can't necessarily conclude that lost profits are the fair measure of damages unless you can calculate what the lost profits are. And so the last step is calculating the lost profits.
Q. Given your conclusion that lost profits is not the appropriate economic measure, did you calculate what you think lost profits would be if they were to apply?
A. Yes, I did.
Q. Did you calculate lost profits on sockets or pins or both?
A. The lost profits calculation would be on pins alone.
Q. Why is that?
A. Because Plastronics H-Pin is the entity claiming that it lost sales, which means that it would have lost profits.
Q. Did you calculate lost profits based on U.S. revenue or worldwide revenue?
A. Just based on U.S. revenue.
Q. And why is that?
A. My understanding that the -- the patent is a U.S. patent, and the only way you can claim damages internationally on a U.S. patent is if the infringement happened in the United States. So if -- if HiCon sold

products into the United States that were then exported out of the United States, that could cause -- my understanding is that could cause patent infringement damages. But I have seen no information that indicates that happened.

MS. DERIEUX: Slide 31, please.

Q. (By Ms. DeRieux) So can you explain your calculation of lost profits in the U.S. on pin sales?

A. Yes. So this slide shows on the first row -- it shows the U.S. pin sales of Plastronics from the beginning of 2012 -- beginning of the time period from 2012 to 2018, showing that -- do this here -- try that again -- there we go -- showing that total pin sales were $41,507,098.00, but that is not total pin sales.

I'm sorry, I may have misspoke. That's the total socket sales.

In order to determine the pin sales, we need to know how much of that sales -- how much of those sales are related to pins. HiCon did not keep records to separate these, and this was part of my interview process. I spoke with Mr. Kwon, and we worked together to determine what his best estimate would be and what the revenue related to pins would be. And he said: It's -- it's difficult to say, but -- but on average, for the customers that we're talking about, and he went back and looked at the different sockets, he -- he concluded that 40 percent was his best estimate,

which means that there's $16,602,839.00 of pin sales into the United States. And so that would be the sales base.

And then in order to figure lost profits, we need to know what the profit margin would be, and so I analyzed the financial information from Plastronics H-Pin and concluded that their incremental profit margin as about 15 and a half percent, indicating that damages for patent infringement related to lost profits on pin sales is $2,575,388.00.

Q. We heard Mr. Perry testify that -- about two lost profit measures for patent infringement. Mr. Perry testified 4.2 million would be appropriate. Why is that number higher than your calculation of 2.6?

A. Mr. Perry's calculations include worldwide sales.

Q. Mr. Perry also testified that 26.2 million was the proper measure of contract-related lost profits. Why is that number 10 times higher than your calculation of 2.5 million?

A. Right. So you remember from the first slide on the timeline, there's a slight timing difference between the patent -- a two-year timing difference between the patent time period for damages and the contract time period for damages.

So on my slide, the contract damages would be -- the $2,481,906.00, which is for a two-year shorter time

period and that's different than Mr. Perry's number for two reasons.

First, Mr. Perry is including -- in his contract damages, he includes lost profits for the socket sales, and it's on a worldwide basis, whereas, my number is just for the pin sales only in the United States.

Q. Why is it wrong, from an economic point of view, to include the sockets?

A. As I explained before, Plastronics H-Pin is the entity that owns the contract and the entity that owns the patent, and, therefore, it's the entity that suffered lost profits, and so that's -- the profits need to be based on the product itself, which is pins.

MS. DERIEUX: Slide 32, please.

Q. (By Ms. DeRieux) Can you summarize your criticisms of Mr. Perry's lost profit calculation?

A. Yes. Mr. Perry's overstating the lost profits because he's including the sales of sockets. He's using Plastronics's higher profit margin, because when he calculates the sale of the sockets as opposed to H-Pin's lower profit margin, then he includes sales outside the United States.

Q. Can you now summarize your lost profits analysis for the jury.

A. Can we go to the next slide, please?

Q. I'm sorry.
A. So trying to pull this all together, I conclude that lost profits is not a fair measure of damages in this case because there's multiple players in the market, which means that Mr. Perry could not support his but-for analysis. He can't conclude the Panduit factors support his analysis.

If lost profits aren't the correct measure of damages, then -- so if lost profits are the correct measure of damages, the damages should be based solely on U.S. sales, the pin sales, and that would mean that damages would be $2,575,388.00.

MS. DERIEUX: Could you clear the screen, please?
Q. (By Ms. DeRieux) If Plastronics's lost profits is not the correct measure of damages, is there another method to determine the economic damages to Plastronics for breach of contract?
A. No. It's my understanding that the economic damages for a breach of contract are essentially lost profits. And if the Plaintiff cannot show that it can support, in the but-for world, that it lost profits, there's no measure of damages.
Q. What about the patent infringement cause of action?
A. So the patent infringement cause of action is a little different because under the patent statute, there's a rule or section that says the damages, if they're not lost

profits, they're, at a minimum, a reasonable royalty.
Q. So is a reasonable royalty in addition to or an alternative to lost profits?
A. It's an alternative to lost profits only for the patent damage claim.
MS. DERIEUX: Could you put up Slide 34, please?
Q. (By Ms. DeRieux) How do you calculate a reasonable royalty?
A. And so a reasonable royalty is calculated by taking a royalty base and multiplying it by a royalty rate to conclude what the reasonable royalty is.
Q. And what is the proper royalty base here?
A. So -- so in this case, the royalty base would be HiCon sales that -- that are subject to a royalty in this agreement -- in this situation, which would be HiCon sales of pins and sockets.
MS. DERIEUX: Slide 35, please.
Q. (By Ms. DeRieux) How do you calculate that royalty base?
A. So this slide shows HiCon sales from 2012 to 2018, which covers the damage period for the patent damages showing that during that time period, HiCon sold $41,507,098.00 worth of pins and sockets that would be subject to a royalty if they infringed this '602 patent.
Q. Once you've established the royalty base, what is the --

what is the next step in calculating a reasonable royalty?
A. We need a royalty rate.
Q. What is the proper royalty rate that HiCon Limited would need to pay if it was required -- if it required a license to the '602 patent?
A. The -- the -- the established royalty rate is 3 percent, but that royalty rate is actually paid to the patent owners which are both Mr. Hwang and Plastronics.
Q. So they would each get 3 percent?
A. No. They would share the 3 percent.
MS. DERIEUX: Slide 36.
Q. (By Ms. DeRieux) Do you have an example illustrating how you determine the correct royalty rate of 1.5?
A. Yes. So this slide illustrates just the basic typical example. You have a technology user that's using technology that's covered by a patent under a license, and that technology user pays a royalty to the patent owner.
And it could be in a dollar amount or a percentage of sales, but the important thing is the technology user pays to the patent owner.
MS. DERIEUX: Slide 37, please.
A. So in this case, the license agreements, which we'll talk about in a moment -- the license agreement indicates that the royalty rate is 3 percent. So -- the technology user is HiCon Limited. So HiCon Limited pays 3 percent,

but, importantly, it's paying to the patent owners, and there's two patent owners, Mr. Hwang and Plastronics.

Therefore, effectively, Mr. Hwang gets one and a half percent, and Plastronics gets one and a half percent. And so in this case, since Plastronics is -- you know, is the Defendant in this matter, that's the only thing that matters. I'm sorry. Plastronics is the Plaintiff in this case. That's the only part of the tree that matters.

MS. DERIEUX: Slide 38, please.

Q. (By Ms. DeRieux) Is this the Royalty Agreement that you testified earlier that you had reviewed?

A. Yes.

Q. And it's the same Royalty Agreement that has been testified about from other witnesses before you today?

A. Yes.

Q. Same document.

Does the Royalty Agreement say anything about splitting royalty received from a third party?

A. Yes, it does.

Q. And what does it say?

A. The Royalty Agreement says that in the event patent royalties are paid by a third-party, PSP and Mr. Hwang will split the royalty 50/50.

MS. DERIEUX: Slide 39, please.

Q. (By Ms. DeRieux) Dr. Woods, how do you calculate the

royalty after you determined the appropriate rate was 1.5 percent?

A. So now we can pull it together, and on the screen, you can see we take the royalty base of $41,507,098.00 times the royalty rate, which is 1.5 percent, determining that the reasonable royalty is $622,606.00.

MS. DERIEUX: Slide 40, please.

Q. (By Ms. DeRieux) What is your final conclusion about damages that Plastronics is owed?

A. So finishing out this section, the lost profits is not the correct measure of damages. And if HiCon Limited infringed the '602 patent, the reasonable royalty is $622,606.00.

MS. DERIEUX: If you would clear the screen, please.

Q. (By Ms. DeRieux) Dr. Woods, did you also calculate damages that Plastronics owes to Mr. Hwang?

A. I did.

Q. And what -- what are the damages owed to Mr. Hwang for?

A. For the use of the '602 patent.

Q. And how did you calculate the royalties that Mr. Hwang is owed under the Royalty Agreement?

A. I refer back to the Royalty Agreement and understood what the Royalty Agreement specifies.

MS. DERIEUX: Slide 41, please.

Q. (By Ms. DeRieux) What does the Royalty Agreement say about what Plastronics owes to Mr. Hwang?
A. The Royalty Agreement explains that -- so the Royalty Agreement explains that Mr. Hwang is to receive 3 percent of gross sales, and then after -- after deducting non-reoccurring capital costs.
Q. What -- what is gross revenue?
A. The -- the term on the document is gross sales, which is very similar to gross revenues, but gross sales is very simply the total amount of money that's received from the sale of products.
Q. Are these sales of sockets or sales of pins?
A. Other -- another place in the agreement, it specifically says that sockets are sold with pins. The gross sales include both the sale of the sockets and the pins.
Q. What are non-reoccurring capital costs referenced here on -- on Slide 41?
MR. BEAR: Objection, Your Honor. Mr. -- Dr. Woods is not here to testify about the meaning of the contract. I believe that's outside the scope of his testimony.
THE COURT: Response, Ms. DeRieux?
MS. DERIEUX: Dr. Woods is here to testify about the damages owed to Mr. Hwang under this contract, and he's explaining to the jury the basis for his calculation of

those damages.

THE COURT: Is it your position that this testimony is set forth and disclosed in his reports?

MS. DERIEUX: It is, Your Honor.

THE COURT: Do you contest that point, Mr. Bear?

MR. BEAR: I do not contest that point, Your Honor. I just believe it's improper testimony.

THE COURT: Well, your objection is overruled.

Let's continue.

Q. (By Ms. DeRieux) What are the non-reoccurring capital costs referenced in the -- the Royalty Agreement?

A. So just like gross sales is a very clear accounting or finance term, non-reoccurring capital costs is also a very clear finance and accounting term, and it refers to the expenditures that are made on the production capacity. It's the -- it's the types of expenditures are made in order to have the ability to produce products.

And the document gives examples like stamping tools, tooling equipment, assembly equipment, test equipment. And it includes those types -- defines the capital costs include things like that, and that's consistent with the definition that capital costs are the expenditures made to have the capacity to produce.

It goes on and adds one thing, which is not necessarily considered a capital cost, and it's this patent

cost. But in my experience, that's not unusual to include this because it's also kind of a one-time expense in order to secure the patent rights in order to be able to sell the products.

Q. Just for clarity, can you give us an example of recurring costs?

A. So recurring costs generally refer -- refer to costs that are incurred as you sell products. So costs of goods sold is a recurring cost and the materials that go into products, rent, salaries, utilities, those types of costs that are related to the -- the actual production and sale of individual products is -- was a recurring cost.

Q. And does the Royalty Agreement itself provide examples of non-reoccurring capital costs that can be deducted from Plastronics's gross revenues?

A. Yes, it does, like the stamping tools and tooling equipment and assembly equipment.

Q. Did you have information to figure out what Plastronics's capital expenditures were?

A. Yes, I did. They provided that information.

MS. DERIEUX: Slide 42, please.

Q. (By Ms. DeRieux) DX-042, is this the document you used to calculate Plastronics's capital expenditures?

A. Yes, I did. Yes, it is. It's a multipage document. And this is just the first page of a listing of the capital

costs that were disclosed by Plastronics.
Q. Were there any costs, other than those in DX-42, that you deducted from Plastronics's gross revenues in your calculation?
A. Yes. As I mentioned, the license agreement specifically also includes the patent costs, and those are deducted from my analysis as well, but they came from a different document.
Q. So you got Plastronics's patent costs where?
A. It was from the -- it was in the last page of the financial statements. I don't remember the DX number.
Q. So which costs did you include?
A. I -- I included the cost -- the capital cost related to the production of H-Pins and the patent cost related to H-Pins.
Q. How often would -- should Plastronics calculate the royalties for Mr. Hwang under this contract?
A. So almost all royalty agreements have a time period, and sometimes their royalties are paid monthly; sometimes they're paid quarterly; sometimes they're paid yearly.

In this particular case, the Royalty Agreement states that Plastronics is to pay Mr. Hwang every six months, twice a year, which means that the calculation of the royalties due needs to occur every six months.

THE COURT: Counsel, approach the bench, please.

(Bench conference.)

THE COURT: How much more time do you believe you have on your direct examination of this witness?

MS. DERIEUX: About 20 minutes.

THE COURT: Do you have any idea what your cross is going to be?

MR. BEAR: I believe it's going to be pretty short, Your Honor.

THE COURT: Well, we've been going almost -- more than an hour and a half. We're going to take a short recess. We'll come back and finish your direct, okay?

MR. BEAR: Thank you, Your Honor.

(Bench conference concluded.)

THE COURT: Ladies and gentlemen of the jury, we're going to use this moment in time to take a short recess. If you'll leave your notebooks simply closed and in your chairs, follow all the instructions the Court's given you, including, of course, you would expect me to remind you, not to discuss the case with each other.

Take a few moments to get a drink of water and stretch your legs, and we'll be back shortly to continue. The jury is excused for recess.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: The Court stands in recess.

(Recess.)

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Be seated, please.

Ms. DeRieux, are you prepared to continue with your direct examination of the witness?

MS. DERIEUX: I am, Your Honor.

THE COURT: All right. Let's bring in the jury, please, Ms. Denton.

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

We'll continue with the Defendants' direct examination of the witness, Dr. Woods.

Continue, counsel.

MS. DERIEUX: Thank you, Your Honor.

Q. (By Ms. DeRieux) Dr. Woods, just before the break, I had asked you how often should Plastronics calculate the royalties for Mr. Hwang? Would you remind us of that answer?

A. Yes. The royalty agreement specifies that the royalty calculation should be made twice a year or every six months.

MS. DERIEUX: May I have Slide 43, please?

Q. (By Ms. DeRieux) Is there a formula you use to determine royalties that Plastronics owes to Mr. Hwang?

A. Yes. Based on the royalty agreement, as we were looking at it before, the royal agreement requires that gross revenues are -- sorry, that non-reoccurring capital costs are subtracted from gross revenues to give you the royalty base and that royalty base is multiplied by the royalty rate of 3 percent which indicates the amount of royalties that are owed to Mr. Hwang.

Q. Over what time frame is Mr. Hwang permitted to obtain royalties?

A. As we discussed before, the royalty agreement is a contract, and so it has the shorter damages time period, which is January 18th of 2014 to 2018.

MS. DERIEUX: Slide 44, please.

Q. (By Ms. DeRieux) Did you compare Plastronics's revenues, capital expenses, and patent costs for each six-month period covered by the royalty agreement?

A. Yes, I did.

Q. And is -- are those calculations reflected in Slide 44?

A. Yes. On the slide -- you see here on Slide 44, I have taken the information provided by Plastronics and grouped it essentially by six-month time periods back to the beginning of the information that's available.

Q. Why did you start back in 2006, if Mr. Hwang is only allowed to recover damages from 2014?

A. Because we were talking before about the -- the capital

costs are things that are used or purchases that are made in order to have the productive capacity to do the -- the production of -- of the H-Pins. There could be times when the capital costs exceed the sales. And so we need to figure out what the -- over time, how these match up to make sure we get the right amount in each individual six-month time period.

And so if you start in the middle, you don't know what the total amount of capital costs versus the sales are. So I had to start from the very beginning to make sure I got the right answer.

Q. When was the first six-month period where Plastronics's revenues exceeded its non-reoccurring capital costs?

A. Based on information and the data that was provided, the first time period that's shown is the second six months of 2006. During that time period, there were sales but no other costs, so a royalty would be due on those sales.

Q. Were there any six-month periods where Plastronics did not need to pay Mr. Hwang a royalty since 2006?

A. Yes, there was one.

Q. And can you show us which one that is?

A. During the first part of -- of 2008, the -- the purchase of machine -- the purchase of the machine was larger than the sales, therefore, during that time period, there was no royalty rate to be calculated -- royalty amount to be

calculated.
Q. How much revenue was -- has Plastronics made on the sale of H-Pins and sockets containing H-Pins since 2006?
A. As shown in the lower right-hand corner, since 2006, Plastronics has generated $65,231,205.00 in total sales of sockets and pins.
Q. And how much has Plastronics spent on patent costs since 2006?
MR. BEAR: I'm going to object, Your Honor. The question is vague, confusing. She's not using the nomenclature you instructed about Plastronics Socket Partners and Plastronics H-Pins, which are different entities.
THE COURT: Well, I'll overrule the objection with regard to substance, but I'll direct counsel to rephrase the question.
Q. (By Ms. DeRieux) How much has Plastronics H-Pin spent on patent costs since 2006?
A. Since 2006, Plastronics H-Pin has spent 66,848 -- sorry, I couldn't read the number. $66,848.00 on patent costs.
Q. And how much has Plastronics H-Pin spent on non-reoccurring capital costs since 2006?
A. $1,818,025.00.
Q. So over the course of the entire business relationship, how much should Plastronics have paid Mr. Hwang?

A. Over the entire time period, if the royalties were made during each six-month time period, the total due to Mr. Hwang would have been $1,900,390.00.

MS. DERIEUX: Slide 45, please.

Q. (By Ms. DeRieux) I believe you stated earlier that Mr. Hwang could only recover from 2014 to 2018?

A. That's correct.

Q. How much should Plastronics have paid Mr. Hwang in that time frame?

A. And so the slide on the screen now takes the information from the previous slide and summarizes it down and flips it on its side. So it only covers the first quarter of 2014 through the end of 2018 -- the date of 2018, showing that Mr. Hwang is due royalties of $1,361,860.00.

Q. Did you calculate Plastronics H-Pin's net profit?

A. No, I did not.

Q. Why not?

A. The contract -- the Royalty Agreement doesn't speak or doesn't require or rely upon the calculation of net profit.

Q. Do you have any understanding about why if they owed Mr. Hwang 1.36 million, Plastronics hasn't paid him anything?

A. Based on my review of the information, as well as the testimony of Mr. Pfaff earlier in the case, Plastronics indicates that it believes that it doesn't owe a royalty

until the net profits of Plastronics H-Pin or what -- or whatever entity, till those net profits fully pay back all the capital costs.

Q. Is there an economic or financial basis for basing the royalties on net profits?

A. No. It's not in the Royalty Agreement. And from an economic standpoint, it -- it doesn't make sense that you pay royalties out of the net profits. The royalties are actually a cost, just like any other cost that a business faces when it's selling products, and so the royalties are a deduction from sales.

Q. What about non-reoccurring capital costs, is there an economic or financial basis to argue that these costs include things like rent or salaries?

A. No, no. As I was explaining before, the very fact that they say they're non-reoccurring capital costs, those words are designed to eliminate the confusion that -- that these costs include the recurring things like rent, salaries, cost of goods sold, those types of things.

Q. Even if we assume that Plastronics's position is correct and they can deduct all of their costs, should they still have paid Mr. Hwang a royalty?

A. Yes. I've seen information in the record, and I showed you previously that there have been time periods when Plastronics H-Pin had positive net income which indicates

that it did cover its costs. And so during those time periods, at a minimum, they should have paid a royalty.

MS. DERIEUX: Slide 46, please.

Q. (By Ms. DeRieux) Did you review DX-052 in forming your opinions?

A. Yes, I did.

Q. Specifically, did you review the portion where Mr. Pfaff writes that he plans to use movie studio cost recovery methods to avoid paying royalties?

A. Yes, I do see it.

Q. Can you explain what movie studio cost recovery means?

A. Yes. Movie studio cost recovery is a phrase that refers to shifting costs between related entities to reduce or eliminate the profits in one of the entities. It's -- it's called movie studio cost recovery because if you're into movies, you know people talk about how much money movies make and which movies are profitable. But there's a large amount of information that indicates that many of the largest most successful movies didn't show a profit to the production company because the actual owners of the production -- of the other production companies, so you have two production companies, one that actually makes the movie and one that owns the production company, what they do, the owners of this guy allocate lots of costs to the movie. So even though the movie will gross --

MR. BEAR: Objection, Your Honor. I think it's an improper narrative. He's going into the intent of this -- of this document and what -- this document means. I think that's improper testimony, Your Honor.

THE COURT: Overruled. Continue with the answer.

A. So what -- what the -- the one movie studio -- the larger movie studio allocates costs to the actual movie production company so that it loses money. And so if you're -- if you're into movies -- my daughter is really into movies and so -- movies like the Return of the Jedi and some of the Harry Potter things came in years where movie studios made lots of money. And if you find the records -- and there's been lawsuits on this -- and you can see that those movies don't have any profits, and it's because this main production company has allocated all of these costs to the movie from other parts of the business so that they don't have to pay royalties -- or net profits are called points, they don't have to pay points to people that have residuals of the movies. That's why it's called movie studio accounting.

Q. Are Plastronics H-Pin and Plastronics Sockets related entities?

A. Yes, they are.

MS. DERIEUX: Slide 47, please.

Q. (By Ms. DeRieux) Did you review DX-426?

A. I did.
Q. And is that the independent accountant's statement?
A. It is. This is the independent accounting report for Plastronics Socket Partners.
Q. And does this exhibit tell you about H-Pin's relation to -- excuse me, Plastronics H-Pin's relationship to Plastronics Sockets?
A. Yes. The document explains that Plastronics H-Pin and Plastronics Socket Partners both have common ownership. It's not exactly the same, but it's very, very close to exactly the same, which means that they're related parties.
Q. Does DX-426 indicate how -- how the two companies are related?
A. They're -- through common ownership.
Q. Have you seen any information that Plastronics Socket and Plastronics H-Pin engaged in this kind of, quote, movie studio cost recovery?
A. Yes, I have.
Q. And can you give us an example of the evidence that -- that you believe falls into this category?
A. Yes, I can. I think, to answer the question fully, though, I need to describe the accountant's report that indicates what they thought the relationship between the two parties and what that indicates.

And what the accountants are saying, as shown on

the screen, is that: Transactions involving related parties cannot be presumed to be carried out on an arm's-length basis, and the existence of the common ownership could result in operating results or financial position of the company to be significantly different than those that would have been obtained if the entities were autonomous.

That's a very complicated way of saying, when you have related parties, the operating results -- that's the income statement -- and the financial position -- that's the balance sheet -- of the individual parties may be different than it would have been had the companies been actually separate.

And that's what we're talking about here and what we're concerned about is movie studio accounting and the allocation of costs between Plastronics H-Pin and Plastronics Socket.

Q. Does DX-426 say anything about Plastronics Socket shifting costs to Plastronics H-Pin?

A. It doesn't specifically mention shifting costs, but it does describe a management fee that's paid from Plastronics H-Pin to Plastronics Socket Partners.

MS. DERIEUX: Slide 48, please.

Q. (By Ms. DeRieux) Has that management fee that you referred to had any impact on Plastronics H-Pin's ability to generate a profit?

A. Yes. Yes, it does.

On the screen now, I have provided -- provided information about Plastronics H-Pin's net income from 2013 to 2018. And the management fee that I mentioned before, it's -- it's -- I said, at a minimum, $8,150 a month, which works out to $97,800 each year.

And so what I'm showing on the screen is, if you take the net income and adjust out the management fee -- and so if Plastronics H-Pin did not have to pay the management fee, how would its net income differ over a time period.

And you can see in the column -- the first column, Column A, that in the time period, with the management fee, Plastronics H-Pin loses over half a million dollars. But that loss is due primarily to the management fee. If there were no management fee, it would basically break even.

Q. Is this an example of what you described as movie studio accounting?

A. It could be considered as such.

Q. We've also heard some testimony about Plastronics's divisive merger. How could the divisive merger impact the royalties owed to Mr. Hwang?

A. So I understand that in general, divisive merger cannot be undertaken to avoid a financial obligation. So a divisive merger should not affect the royalties that are due.

MS. DERIEUX: Slide 49, please.

Q. (By Ms. DeRieux) How might the divisive merger allow Plastronics to reduce the royalty base?

A. However, the divisive merger could allow Plastronics to reduce the royalty base because Plastronics believes the right royalty base is H-Pin sales, and Plastronics, as an entity, controls the sales between Plastronics H-Pin and Plastronics Socket; therefore, it can set an artificially low price between the two, which has the effect of lowering the royalty rate -- royalty base.

Q. Does that result in an opportunity to avoid a royalty obligation?

A. Yes. Once again, as the previous slide, I illustrated that the management fee can cause Plastronics H-Pin to either have a profit or not have a profit, and if Plastronics believes that the royalty -- the royalty that's due is dependent upon net profit or the net operating results of Plastronics H-Pin, then these -- accounting shifts -- or these shifts between the entities could result in the ability to avoid paying any royalty obligations.

Q. Did you see any information that Plastronics H-Pin's margin is lower than it should be?

A. Yes. So it's difficult to understand the prices and evaluate the prices that are being charged between Plastronics H-Pin and Plastronics Socket Partners.

However, we can compare the margins because that information is -- it's a percentage. So it's a ratio you can compare between companies. And there's also additional information in the -- available about averages.

So Plastronics H-Pin is a manufacturer. It manufactures a product. You would normally think that a manufacturer would have a higher gross profit margin than a distributor because a distributor simply takes products that were manufactured and moves them from one place to another.

I'm not trying to say distributors aren't important; I'm saying that's usually a lower margin because it's not as much value added in moving a product as it is in making a product.

THE COURT: Dr. Woods, would you mind slowing down as you give some of these lengthy answers, please?

THE WITNESS: Thank you, Your Honor.

THE COURT: That'd be helpful.

Let's continue.

A. So I found that there's a service that provides information about the average gross profit margin for wholesale distributors in the electronic industry.

And my initial thought would be that the wholesale margin would be less than Plastronics H-Pin's margin, but it turned out to be the other way around. Plastronics H-Pin's margin was 14 percent lower than the wholesale distributor

arrangement, which indicates that the price that Plastronics H-Pin is charging to Plastronics Socket is too low.

Q. (By Ms. DeRieux) What does this mean to the royalties that are owed to Mr. Hwang?

A. As it works out, that means the royalties are 14 percent too low because of the low price between Plastronics H-Pin and Plastronics Sockets.

MS. DERIEUX: Can we have Slide 50, please?

Q. (By Ms. DeRieux) Dr. Woods, can you summarize your conclusions for us in this case?

A. Yes. As I mentioned at the very beginning, I believe that lost profits is not a fair measure of damages in this case.

If HiCon Limited infringed the H -- the '602 patent, the damages are measured by a reasonable royalty of $622,606.00.

And, finally, I concluded that Mr. Hwang is owed $1,361,860.00 in royalties for Plastronics's use of the technology described in the '602 patent.

Q. Thank you.

MS. DERIEUX: I pass the witness, Your Honor.

THE COURT: Cross-examination.

MR. BEAR: Yes, Your Honor.

THE COURT: Proceed when you're ready, Counsel.

MR. BEAR: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BEAR:

Q. Transactions between related parties cannot be presumed to be arm's length. That's what you just said, right?

A. That's what the accountant said, yes.

Q. Do you agree with that statement?

A. Yes.

Q. So a related party is one that has common ownership, right?

A. That's one way parties can be related, yes.

Q. A related party could be a corporation and a sole proprietorship owned by the same person, right?

A. I suppose.

Q. It would be a related party under your definition; isn't that right?

A. Yes. If you're keeping -- if the sole proprietorship has separate books and records and you're accounting for everything separately, then, yes, they would be related.

Q. You didn't talk about books, sir. You said when there's common ownership. There's common ownership, isn't there?

A. Yes, there is.

Q. Okay. HiCon, DBA, is a DBA of Mr. Hwang, right?

A. Yes.

Q. And HiCon Co. Limited is owned majoritively by Mr. Hwang. Also true, right?

A. I believe that's the testimony, yes.
Q. They're related parties, aren't they?
A. I believe so.
Q. So you cannot presume that they're arm's-length transactions, can you?
A. Generally speaking, no, you cannot presume that.
MR. BEAR: Ms. Bowron, can we go to DX-52, please.
Can you go to the third page. And can you please blow up the Options portion of the document.
Q. (By Mr. Bear) It says Options, doesn't it, Dr. Woods?
A. Yes, it does.
Q. Doesn't say what he's going to do, does it?
A. It says Options.
Q. It says Options.
No. 3, please read that to me.
A. No. 3 says: Spin off all the H-Pin business into an entity and sell at cost to Plastronics as a master distributor, therefore, never worrying about royalties.
Q. Plastronics H-Pin does not sell at cost to Plastronics Socket Partners. That's right, isn't it?
A. I believe that that's correct.
Q. They have a 30 percent margin about, between the two entities, yes?
A. I -- I don't remember. I think it is in that range.
Q. Well, you gave a report, didn't you, in this case?

A. I did.

MR. BEAR: And, Ms. Lockhart, could I please have the ELMO?

Counsel, this is going to the expert report of Dr. Woods, February 18th, 2019, Page 12.

Q. (By Mr. Bear) The average is 28.4 percent. That's what you put in your report, isn't it?

A. Yes, that's correct.

Q. In fact, the margin is as high as 40 percent in some instances, in some instances; isn't that right?

A. You took the document away.

Q. Right there, sir, where my thumb is, 41.3. Isn't that what it says?

A. That's what it says.

Q. That's what you saw in the financial statements, right?

A. In the financial information that was provided by Plastronics in this case, yes.

Q. But you don't think that's legitimate, do you?

A. Legitimate?

Q. So you don't have an opinion about whether the margin is legitimate in this case?

A. I don't know what context you're using legitimate.

Q. Well, do you believe it's reasonable?

A. It's difficult to evaluate whether it's reasonable or not because I don't fully understand what Mr. Pfaff and --

well, what Plastronics believes the value of the H-Pin is.
Q. So you don't know whether it's legitimate; you don't know whether it's reasonable. Is that what you're telling these folks?
A. I'm telling you that there's reason to have -- suspect that the numbers are not arm's-length transactions. They're -- the numbers are not determined by the marketplace so that means that they can be manipulated by --
MR. BEAR: Strike as non-responsive, Your Honor. It was a yes or no question.
THE COURT: State your next question.
MR. BEAR: Thank you, Your Honor.
Q. (By Mr. Bear) I notice when you were testifying up here with Ms. DeRieux, you don't say that it did reduce revenue; you said it could be reducing revenue. Didn't you say that?
A. Yes.
Q. You don't know for certain whether it did; you just think it's possible that it did; isn't that right?
A. I believe that the divisive merger and the structure that was undertaken by Plastronics provides the opportunity to affect the royalty calculation.
Q. An opportunity. Is that what you just said?
A. That's correct.
Q. You won't say that it actually happened; it's only an opportunity for it to happen, right?

A. I believe that there's evidence that it did happen, but it provides an opportunity.
Q. No, no. You just said under oath that there was an opportunity, and it could happen. That's what you said, right?
A. That's correct.
Q. Okay. So you are not telling these people that there was actually an illegitimate, unreasonable transaction between the two; isn't that right?
A. That's correct.
Q. You're just saying it's possible.
A. That's correct.
Q. It'd be really suspicious if there was a margin of only 10 percent between two entities, right, two related entities?
A. It depends.
Q. Well, 10 is less than 28.4, right?
A. Yes.
Q. So that would be even a lower mark-up, right?
A. It would be, but as I was --
Q. It would. It would, wouldn't it?
A. It would be.
Q. Okay.
THE COURT: All right. Let's make sure each finishes before the other one jumps back in.

MR. BEAR: I apologize, Your Honor.

THE COURT: We're going to do this one at a time.

MR. BEAR: I'm sorry about that.

THE COURT: Continue.

Q. (By Mr. Bear) Profit margins between HiCon Co. Limited and the sole proprietorship is 10 percent, isn't it, on H-Pins?

A. I -- I believe that -- that they -- that those sales are marked up 10 percent, yes.

Q. That's less than the Plastronics Socket Partners and Plastronics H-Pin sales; isn't that right?

A. Yes.

Q. And we just agreed that because the 28.4 percent mark-up, that it could be a lack of an arm's-length transaction for Plastronics, right?

A. Sir, I don't understand your question.

Q. You say that it's possible that these transactions might be avoiding royalties because they're only 28.4 percent. That's what you're saying, right?

A. I'm saying that the structure -- the structure that Plastronics has undertaken in the divisive merger between Plastronics H-Pin and Plastronics Socket Partners provides an opportunity to reduce the royalty paid to Mr. Hwang.

Q. You weren't asked by these folks over here to determine whether the transactions between the Limited company and the

DBA were legitimate, were you?
A. I was not.
Q. But we've already agreed that it has less of a mark-up than these supposed problematic sales between H-Pin and Socket Partners; isn't that right?
A. The margin is lower.
Q. The margin is lower. The but-for world in this case is a world where HiCon DBA or HiCon Limited Company are not selling H-Pins and sockets, right?
A. I'm sorry, could you repeat the question?
Q. Are you familiar with the term "but-for"?
A. Definitely.
Q. And we're talking about a but-for world in this case, right?
A. Yes, but I need to get the parties correct.
Q. Okay. I can understand. HiCon Co. Limited, right --
A. Yes.
Q. -- and HiCon DBA --
A. Yes.
Q. -- are in the market of selling H-Pins and sockets, right?
A. Yes.
Q. And so the but-for world in this case is a world where those two are not selling products into the United States, right?

A. Yes. But in the but-for world, the -- the DBA cannot sell into -- into the United States, and we're assuming that the sales were made by HiCon Limited, which would not be selling in the United States.

Q. Right. So when we're trying to figure out whether a sale would or would not have happened, we're assuming that the HiCon entities are not selling the H-Pins and sockets, right?

A. I believe that's correct.

Q. Okay. Good. So let's take your analysis. You mentioned Sensata, right?

A. Yes.

Q. Okay. So you're saying that in a world where the HiCon entities are not selling a socket or a pin, that it's possible that a potential customer who selected an H-Pin would buy from Sensata instead of Plastronics, is that -- that's what you're saying is possible, right?

A. That's one of the possibilities, yes.

Q. One of the possibilities.

The H-Pins for Sensata come from Plastronics; isn't that right?

A. That's correct.

Q. And Sensata has a mark-up on that H-Pin; isn't that right?

A. I -- I would -- would assume.

Q. You would assume, right?
A. Yes.
Q. There would be a normal mark-up.
So you're trying to tell these folks that instead of going and buying directly from the manufacturer, these same folks are going to go out and purchase from another distributor who has a mark-up on the same product? Is that what you're trying to say is possible, sir?
A. We know that that's possible.
Q. That's what you're trying to say is that someone would voluntarily buy an H-Pin at a higher price?
A. People are. Sensata includes H-Pins in its products and sells those which has nothing to do with this case.
Q. Do you know what their pricing is on sockets?
A. I do not.
Q. Do you know what their sockets actually do as far as their performance capabilities?
A. I do not.
Q. And you're not a technical expert in this case, are you?
A. I am not.
Q. In fact, your -- the way that you got your technical information was from three live interviews, more or less, right? Mr. Hwang, right?
A. Yes.
Q. Mr. Schubring, who was just on earlier, right?

A. Yes.
Q. And Mr. J.T. Kwon, right?
A. Mr. Kwon provided financial information.
Q. Okay. He didn't tell you about technical information, did he?
A. He did not.
Q. Okay. So you don't -- when -- when we went through all of those entities that you say are competitors, you don't know what the performance capabilities of those sockets are, right?
A. I do not.
Q. You don't know what the performance capabilities of those H -- of the contacts that they use is, do you?
A. I do not.
Q. And so when you gave the example of a Ferrari versus a Civic, you know -- generally speaking, you know that there's a difference in horsepower, right?
A. There is.
Q. You would know the performance capability of those two products, right?
A. Yes.
Q. And that's important to determining the difference in the -- the value of the products, right?
A. It's important in evaluating the differences of the products, yes.

Q. Yeah, absolutely. And it's important in evaluating the reasons why somebody would buy a product, right?
A. Yes.
Q. So if somebody went out and bought a Ferrari and they have Ferrari money, then they presumably want the performance of a V12 engine, right?
A. Well, this is what I was saying before. That may not be true. The ability to buy a Ferrari -- it goes beyond money. So there's other things that that purchase could reveal besides the need to have a V12 engine.
Q. Somebody who buys a Ferrari wants a daily commuter; is that what you're telling these folks?
A. No. Someone buys a Ferrari, may want a Lamborghini or they may want --
Q. They would need something that matches the performance capabilities, right?
A. Not necessarily the same performance capabilities, maybe some -- something different. You had mentioned specifically V12 engine. My point is you don't know why they purchase the Ferrari, therefore, it'd be very difficult to determine what other vehicle that they would like.

And my point was that when somebody buys a Ferrari, all you know is they bought a Ferrari. You don't know if they're looking for the status of being a Ferrari owner, and so maybe without the Ferrari, they'd be --

MR. BEAR: Strike as non-responsive, Your Honor.

THE COURT: Overruled. He can finish his answer. Go ahead.

THE WITNESS: I was done. Thank you.

THE COURT: All right. If that's the completion of your answer.

Ask the next question.

MR. BEAR: Thank you, Your Honor.

Q. (By Mr. Bear) So you don't know the performance capabilities of the sockets from these competitors that you listed off for these folks?

A. I don't know the specific performance capabilities of the products. I do know --

Q. Sir, that wasn't my question. My question was --

THE COURT: Counsel --

MR. BEAR: Sorry.

THE COURT: -- if you believe the witness is non-responsive, raise it with the Court. Don't take it up with the witness.

MR. BEAR: I apologize, Your Honor.

Q. (By Mr. Bear) You don't know the performance capabilities, sir, of the contact pins, do you?

A. Which contact pins?

Q. The contact pins of all those companies that you listed for this jury.

A. I do know that Mr. Schubring explained that those competitors provide vertical steel -- vertical springs -- provide stamped steel springs for vertical contacts that are similar to the H-Pin. I don't know the exact performance requirements or specifications of each of those competitors, but I do know that Mr. Schubring explained that they are similar to the H-Pin.

Q. And you're basing it totally off of what Mr. Schubring told you and Mr. Hwang, right?

A. Not completely. As I explained before in my interview process, before I spoke with Mr. Schubring and Mr. Hwang, I went to websites and looked. And there are pictures of different types of springs and different -- different types of contacts.

Some of them look somewhat similar to an H-Pin, and some of them look completely different. And this was the process that I went through with Mr. Hwang and Mr. Schubring to understand which ones were similar.

Q. These different sockets have different applications, right, technically?

A. Yes, they do.

Q. They can have vastly different applications, right?

A. I don't know what you mean by vastly different.

Q. Because you're not a technical expert, right?

A. I understand enough about the products to understand

there's different applications. I don't know what you mean by "vastly."

Q. Well, you can't quantify the differences between sockets, right, as far as a technical capability?

A. I can -- I do have knowledge about the markets that the sockets are sold into and what -- the general requirements and the differentiations of those markets.

MR. BEAR: Strike as non-responsive, Your Honor.

THE COURT: Overruled.

Q. (By Mr. Bear) Sir, going back to the royalty issue, you understand that Mr. Pfaff believes that the royalty should be calculated on net profit, right?

A. I believe that's what Plastronics has -- the witnesses for Plastronics have explained.

Q. You're not here to testify about the meaning of the contract, are you?

A. That's correct.

Q. You have no opinion about what the contract means; isn't that right?

A. No, I think that -- that overstates. I -- I had to read the contract and operationalize the language in the contract to perform my calculations. And that's the extent of the opinion I'm providing on the contract.

Q. An interpretation that was advanced by counsel, right?

A. That's not correct.

Q. They don't have that interpretation, sir?
A. I -- I think that they do, but I reached that conclusion independently -- independently while working on the case.
Q. They didn't tell you that that was going to be their theory of the case?
A. They did not.
Q. And you don't have an opinion about liability, right? You're a damages expert?
A. As I explained before, damages experts always assume liability.
Q. You assumed that they're right on their theory of liability, right?
A. Yes.
Q. You don't have an opinion about what this contract means? You're not here to tell these folks what this contract means, right?
A. That's -- you're asking me two questions, and I think the answers to those two questions are different.
THE COURT: Then say you don't understand, Dr. Woods.
THE WITNESS: Thank you.
Q. (By Mr. Bear) I notice you were talking about the HiCon entity's revenues. Did I see that right that in 2015, they sold -- was it 65 -- $64 million worth of pins and sockets in 2015?

A. I don't know -- I don't know what you're speaking of.
Q. Is that about right, they were selling tens of millions of dollars in 2015?
A. I'd rather not speculate.
Q. You highlighted it to the jury, didn't you? I mean, you went through the slides, right?
A. I -- I did go through the slides, but I don't know what you're specifically referring to.
Q. I want to talk about -- let's go to manufacturing capabilities. You didn't tour the Plastronics factory, did you?
A. No.
Q. You based this solely off the financial statements, isn't that correct, the sales data?
A. I relied upon Plastronics's financial information and other information they provided in forming my opinions.
Q. So you don't know exactly how many H-Pins that Plastronics H-Pin can produce, do you?
A. No.
Q. You don't have that number, do you?
A. Plastronics has not provide -- provided information about the maximum capacity of H-Pin production that they have.
Q. And so you don't know exactly how much they could expand their operations with, say, including additional capital

expenditures, right?
A. I don't.
Q. You do not know, correct? Right?
A. Correct. I understand Mr. Furman testified how they could increase H-Pin production capacity.
Q. Mr. Furman is a technical expert, isn't he?
A. In certain areas, I think, he is, yes.
Q. He has more technical expertise about the production of these things than you, right?
A. I believe so.
Q. Going back to the -- to your market analysis, you don't believe that this is a two-party market, do you, with H-Pins?
A. The -- the relevant market is clearly not a two-party market.
Q. You relied on Mr. Hwang's deposition, didn't you, in forming your opinions?
A. I read and reviewed and relied upon many things, including on Mr. Hwang's deposition.
Q. And, in fact, you relied on conversations with Mr. Hwang in forming your opinion, right?
A. As I explained, that was part of the information set that I gathered in my fact finding.
Q. When you interviewed him, he wasn't under oath, right?
A. He was not under oath.

Q. He was under oath in the deposition, though, right?
A. Yes.
MR. BEAR: Ms. Bowron, can we put up that slide, please?
Q. (By Mr. Bear) This is taken from his deposition, sir.
Question -- can you read that highlighted portion, sir?
A. Yes.
Question: Okay. I'll -- the last sentence that I was referring to was: "Hwang believes there are only two suppliers of this type of spring pin contact in the United States. One, HiCon, and, two, Plastronics."
Do you agree with that statement, Mr. Hwang?
Mr. Emerson: Form.
Answer: Yes, I do.
MR. BEAR: Thank you, Ms. Bowron.
Q. (By Mr. Bear) Mr. Hwang believes that there are only two manufacturers of the H-Pin in the market. That's what that said, right?
A. That is what that said.
Q. And you read that as part of forming your opinions, correct?
A. I did.
Q. But you do not believe it's a two-player market?
A. I do not believe it's a two-player market.

Q. Thank you.

MR. BEAR: I pass the witness, Your Honor.

THE COURT: Is there redirect, Ms. DeRieux?

MS. DERIEUX: There is, Your Honor.

THE COURT: Proceed.

REDIRECT EXAMINATION

BY MS. DERIEUX:

Q. Mr. Hwang's testimony that you were just reading, tell me if this is accurate. He said: Two people make H-Pins.

Is that correct?

A. Yes, that's correct.

Q. Does the fact that only two companies manufacture H-Pins mean that this is a two-player market?

A. No, that -- that has nothing to do with the definition of a relevant market and the analysis that needs to be performed to determine whether lost profits are the appropriate measure of damages in the case. One needs to understand what the available non-infringing substitutes would be to the H-Pin. And it turns out there are two manufacturers of H-Pins, but there's -- I think there was eight manufacturers of other pins that are similar enough to be competitive with an H-Pin.

Q. Regarding manufacturing capability of Plastronics's H-Pin, was it your testimony that you didn't know exactly how many H-Pins Plastronics H-Pin could possibly make?

A. That's correct.
Q. Has there been any evidence regarding how many pins they would have to make to make up all of the sales that HiCon Co. Limited made?
A. No, there's no information in the record about the number of pins that would be needed to be manufactured by Plastronics H-Pin to fulfill the needs that would be necessary to make HiCon sales, therefore, you can't conclude that Plastronics H-Pin has the manufacturing capacity to make an indeterminate number of pins.
Q. When you testified earlier and gave your examples about how margins work, I believe you testified that distributor margins are perhaps lower in some circumstances. Could you explain that?
A. Yes. In general, one would assume that -- or one would conclude, based on knowledge in the industry and concepts of economics, that a distributor would have a lower margin than a manufacturer. And when I looked at the actual data for the average distributor in the wholesale market for electronics, it turns out that their margin was higher than Plastronics's H-Pins.
Q. Is it your understanding that the HiCon DBA is a distributor?
A. The HiCon DBA is -- is performing the distribution of HiCon Limited's products.

Q. Is there any information provided to you or evidence in this case about the specific value of an individual, single H-Pin?

A. No.

Q. Can the reasonableness of a particular margin be determined in the abstract without evidence of the specific market and product that you're discussing?

A. No. That's -- the point I was trying to make is that just because you have numbers, it's very difficult to know whether they're reasonable. You have to have something to compare it to and an understanding of the relevant market that you're speaking of to understand whether or not that particular percentage is reasonable.

MS. DERIEUX: That's all I have. I pass the witness, Your Honor.

THE COURT: Additional cross-examination?

MR. BEAR: No, Your Honor.

THE COURT: All right. Dr. Woods, you may step down, sir.

Defendants, call your next witness.

MR. EMERSON: Your Honor, that was our last -- our last witness, and the Defense rests.

THE COURT: All right. The Defendants have rested their case-in-chief. Do the Plaintiffs have a rebuttal case to put on?

MS. BROZYNSKI: Yes, Your Honor. Plaintiff calls Mr. Chase -- Mr. Chase Perry again.

THE COURT: All right. Mr. Perry, if you'll return to the witness stand as the Plaintiffs' first rebuttal witness. I remind you, sir, you remain under oath.

MS. BROZYNSKI: May I proceed to the lectern?

THE COURT: Yes, you may.

MS. BROZYNSKI: Thank you.

THE COURT: Proceed when you're ready, Counsel.

MS. BROZYNSKI: Thank you, Your Honor.

CHASE PERRY, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN?

DIRECT EXAMINATION

BY MS. BROZYNSKI:

Q. Good afternoon, Mr. Perry.

A. Good afternoon. Excuse me. Good afternoon.

Q. Did you analyze Panduit factors, sir?

A. Yes, I did.

Q. And could you remind the jurors briefly, what was the structure of that analysis?

A. Dr. Woods took the jury through it. He enumerated it 1 through 4. I talked about the very same issues with the jury earlier in my direct testimony, and that would be this notion of substitutes, are there substitutes for the HiCon products in the marketplace in the but-for world, whether there's capacity, from a manufacturing and marketing

standpoint, for Plastronics to sell the products that HiCon sold, and then what the profit would be in that instance. And we talked about all those issues.

Q. Mr. Perry, did that analysis include a qualitative part?

A. Yes. I'm sorry. Absolutely it did. But my analysis of the substitutes issue necessarily involves a qualitative analysis of the semiconductor testing market, which I did.

Q. I apologize for the pronunciation.

A. No problem.

Q. Did you rely on revealed preference theory for a basis for any calculation?

A. No, I did not.

Q. What is your understanding of who owns the Royalty and Assignment Agreement between the two companies, two Plastronics companies?

A. Plastronics H-Pin currently owns those.

Q. And is it further your understanding that Plastronics H-Pin does not manufacture sockets?

A. Yes, I'm aware of that. They don't.

Q. Does that necessarily mean that Plastronics H-Pin cannot recover damages for HiCon socket sales with H-Pin in them?

A. No, it doesn't mean that. My understanding of the framework for damages is that damages on sockets are still available, they're contemplated in the contract, and they were foreseeable.

Q. And, again, what is your opinion regarding Plastronics's H-Pin breach of contract claim?
A. That a fair measure of damages is in the form of lost profits in the amount of about $25.9 million.
Q. And regarding Dr. Woods's opinion of the amount of damages owed to Mr. Hwang for unpaid royalties on Plastronics's H-Pin sale, do you agree with this opinion, sir?
A. No, I do not.
Q. Why not?
A. Because the agreement that Mr. Pfaff had with Mr. Hwang, Plastronics had with Mr. Hwang, was that there would indeed be a subtraction or an accounting for non-reoccurring capital costs but that royalties would only be paid to the extent there were net profits available to pay them.
Q. Can you have a look at your rebuttal report, Page 9, Table 2?
MS. BROZYNSKI: Ms. Lockhart, can I have...
Q. (By Ms. Brozynski) Okay.
A. Can we go in just a little bit and focus? I almost have it.
Okay. That's fine.
Q. Can you walk us through this analysis?
A. Sure. So this is an analysis that is in my rebuttal report to Dr. Woods's analysis.

Table 2 is a royalty based on Plastronics's H-Pin sales, so we're just talking about pins here. And that shows that for the period of 2014 through the third quarter of 2018, which is the latest that Plastronics's financials go through, there were gross sales of about $4.8 million, there were costs of sales of about $3.4 million, so there was a gross margin, but I think I mentioned a minute before that the agreement was that there must be a net margin to actually pay for these royalties.

So you have to subtract the total expenses of the company, which are about $2.1 million, and what you get is the next to last line says net income, and the brackets around that $694,233 means it's negative. So that's a loss.

So --

Q. So --

A. Sorry. So during that period of time that we're talking about breach-of-contract damages, Plastronics H-Pin did not earn a net income.

Q. Which means that -- for royalty purposes, which means what?

A. It means that there's no royalty yet due. There may be in the future, but there's not yet.

Q. Mr. Perry, did Dr. Woods give an alternative opinion of Mr. Hwang's damages that includes royalty on sockets?

A. Yes. I think that was his $1.4 million number or so.

Q. And do you have a rebuttal to that figure in the event the jury determines that Mr. Hwang's damages should be determined based on the net sales of Plastronics's H-Pins and H-Sockets?

A. Yes, I do.

Q. What is the appropriate measure of damages in your opinion?

A. Well, it's -- just as here, we would calculate to see if there are unpaid royalties that are due, and that calculation, again, depends on whether there is net income to pay those royalties after subtracting capital costs.

So if we go to actually the next page of this rebuttal report, I have a Table 3. It's doing the exact same thing we just did for Plastronics H-Pin, but this time it's doing for Plastronics Socket.

So the numbers are obviously different. First line, Plastronics Socket had gross sales of 46.7 million, cost of sales of about 20.8 million leaving, again, a gross profit of 25.9 million.

But, again, we have to take all expenses into account because that's what the agreement was between the parties. Total expenses were about 23.1 million, and that does leave net income of about -- well, of $2,737,106.

The final step there is the royalty rate which Dr. Woods talked about and which I don't have any

disagreement with, 3 percent, and the figure, if you multiply that $2.7 million by 3 percent is about $82,000.

Q. Mr. Perry, you've heard Mr. Schubring testifying on direct today, correct?

A. I did.

Q. And did you hear him talk about quality and delivery issues that HighRel has had with Plastronics?

A. Yes, I did hear him talk about that.

Q. And how does that factor into your analysis, sir?

A. Well, it's something I knew about. I talked to Mr. Furman about that issue, and my understanding, based on that discussion, was that those issues had been resolved.

Q. And did you also hear Mr. Schubring testifying about relative advantages of those non-H-Pin products?

A. Yeah. I think he said something to the effect of they have a lot of the advantages. This is -- I say they. Let's be clear.

So non-H-Pin pins and products have some of the advantages of H-Pin and H-Pin products but not necessarily all and that they may cost less than the H-Pin products. And there has been some different combinations among those other competitors.

Q. Mr. Schubring mentioned integrated solution.

A. Yes, he did, and that was interesting to me.

Q. Why is that?

A. Because there's only two suppliers in the H -- that sell H-Pins, that sell an integrated solution. And what is meant by that is they manufacture the pin and they manufacture the socket that the pin goes in. That's Plastronics, and that's HiCon.

Sensata sells sockets with H-Pins in them from Plastronics, but they don't make the sockets. They certainly don't -- they're not Plastronics's sockets. So you've got sort of two different things here. You've got these integrated manufacturers, and then you've got this sort of distributor that puts things together.

Nothing wrong with that, but the issue that Mr. Schubring brought up is that it's a competitive advantage to have an integrated solution. Those were his words. And I think that very much supports what I've been saying here.

Q. Mr. Perry, is there anything that you've heard in this trial that causes you to change your opinion you rendered about damages?

A. No. In fact, what I have heard is confirmatory.

Q. Thank you, Mr. Perry.

MS. BROZYNSKI: Pass the witness.

THE COURT: Cross-examination.

MS. SIVINSKI: Yes, Your Honor.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MS. SIVINSKI:

Q. Good afternoon.

A. Afternoon.

Q. Mr. Perry, you don't have a technical background, do you?

A. I was pre-med for a while, but that's the extent of it. I'll be fair.

Q. Is your undergraduate degree in psychology?

A. It is.

Q. Were you here for Mr. Furman's testimony?

A. Yes.

Q. Did you hear Mr. Furman testify that Plastronics H-Pin would have never lost a sale of a socket?

A. Yes, I agree with that.

Q. And your damages analysis is that Plastronics H-Pin can recover for lost socket sales?

A. That's correct.

MS. SIVINSKI: Mr. Brockwell, can you please bring up PX-30?

Can you zoom in, please, on Paragraph 3?

Q. (By Ms. Sivinski) This is the Royalty Agreement between Plastronics and Mr. Hwang, isn't it?

A. Yes.

Q. And -- excuse me -- you testified that royalties should

be calculated after net profit; is that correct?
A. No. I testified that that is Mr. Pfaff's interpretation of this agreement.
Q. Do you see the word profit in Paragraph 3?
A. No, I don't.
Q. Do you agree with Dr. Woods that gross sales is a clearly defined accounting term?
A. Yes, I do.
Q. And do you agree with Dr. Woods that gross sales are all sales before deduction of any costs?
A. Yes, that's generally correct.
Q. And non-reoccurring capital costs is also well defined, isn't it?
A. I think it's a common term, yes.
Q. And non-reoccurring capital costs do not include rent?
A. Generally not.
Q. And they don't include salaries?
A. Generally not.
Q. And you agree with Dr. Woods that non-reoccurring capital costs do not include utilities?
A. I would generally agree with that.
Q. When calculating whether there are net profits, do you need to deduct cost of goods, rent, salaries, and utilities?
A. Yes, you do.
MS. SIVINSKI: I pass the witness, Your Honor.

THE COURT: Additional direct?

MS. BROZYNSKI: Nothing further, Your Honor.

THE COURT: All right. You may step down, Mr. Perry.

Plaintiffs, call your next rebuttal witness.

MR. DALTON: Plaintiffs rest, Your Honor.

THE COURT: All right. Subject to closing argument, both sides rest and close; is that correct?

MR. DALTON: That's correct, Your Honor.

MR. EMERSON: That's correct, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, you have now heard all the evidence in this case. There are certain things that I have to take up with counsel for the parties that don't require your presence, and the good news from that reality is that you're going to get to go home early today. But the other part of the story is I need you back tomorrow.

So I'm about to allow you to recess for the day. I'll ask you, as you leave, to leave your juror notebooks closed and on the table in the jury room. I'll remind you as we get closer and closer to the end of this trial that you should re-double your efforts to comply with all my instructions, including, chief among them, not to discuss this case with yourselves or with anyone else.

The matters that I am required to deal with

counsel on will probably take the rest of the afternoon, into the evening, and it may well take some of tomorrow morning before I'm prepared and ready to have you back here in court.

Consequently, what I'm going to do, ladies and gentlemen, is I'm going to ask you to be here at 10:00 o'clock in the morning.

Now, this is an art; it's not a science. I may be done and waiting on you before 10:00 o'clock. You may get here at 10:00 o'clock and have to wait on us. So we will just have to see where everybody is. I cannot promise you with certainty exactly how long it will take the Court to cover those things I have to cover outside of your presence.

But you're going to get home early today, and you're going to get to come in late tomorrow. So I don't think I can do much better than that.

If you will plan your travel tomorrow so you can be here assembled in the jury room by 10:00 o'clock, that will be satisfactory. Travel safely to your homes, follow all my instructions, and we'll see you tomorrow at 10:00 a.m.

The jury is excused at this time.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: All right. Counsel, be seated,

please.

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My intention at this juncture is to take about a 15-minute recess, and then at approximately 4:00 o'clock, I will hear motions from either Plaintiff or -- Plaintiffs and Defendants -- depending who wants to make them, I'll hear motions from either party -- from both parties, offered under Rule 50(a) of the Federal Rules of Civil Procedure.

I expect us to get through those motions today, and we will probably at least begin and hopefully complete the informal charge conference today.

The reason I did not ask the jury to back -- be back first thing in the morning is I think we'll need some additional time probably to complete the formal charge conference and be ready to begin with the Court's final instructions to the jury, followed by closing arguments some time toward the middle or latter part of the morning.

As I told the jury, this is not an exact science, but it's a best approximation.

Also, sometime in the morning, well before the jury returns, I'll expect both sides to be prepared to read into the record those items from the list of pre-admitted exhibits that have been used during today's portion of the trial.

That's a brief overview of where we stand in the Court's view.

Is there anything we need to take up before we begin that short recess I mentioned? If not --

MR. DALTON: Nothing from Plaintiffs, Your Honor.

MR. EMERSON: No, sir.

THE COURT: All right. We stand in recess until 4:00 o'clock.

COURT SECURITY OFFICER: All rise.

(Recess.)

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Counsel, at this time, the Court's prepared to hear motions from Plaintiffs and/or Defendants that either side or both sides wish to offer under Rule 50(a) of the Federal Rules of Civil Procedure.

Does Plaintiff have motions to offer under Rule 50(a)?

MR. DEVORA: Yes, Your Honor, we do.

THE COURT: All right. What I'd like you to do, Mr. Devora, without arguing them, is simply identify the matters which you wish to move for relief on under Rule 50(a).

MR. DEVORA: First, Your Honor, we have --

THE COURT: And if you would, please, sir, go to the podium. Then I'm going to ask the Defendants to do the same thing.

It's the Court's experience that often there are diametrically opposed motions that can be effectively argued at the same time, so that's what I'm trying to do here is identify what's going to be raised and made an issue of by both sides.

So from the Plaintiffs, what do you have?

MR. DEVORA: Thank you, Your Honor.

First -- first issue, Your Honor, is Defendants' claims for damages.

The second one is Defendants' defense for fraud in inducement.

The third one is our inducement infringement claims against both the DBA and HiCon Limited.

The fourth --

THE COURT: When you say your inducement claim, you're asking for judgment as a matter of law that the Defendants have induced infringement of the patent-in-suit?

MR. DEVORA: Correct, Your Honor.

THE COURT: Okay. Fourth one?

MR. DEVORA: Personal jurisdiction.

THE COURT: All right. Anything further?

MR. DEVORA: Direct infringement.

THE COURT: All right.

MR. DEVORA: Our breach of contract claims.

THE COURT: What else?

MR. DEVORA: Tortious interference.

THE COURT: What else?

MR. DEVORA: And willfulness.

THE COURT: And by that, you mean willful patent infringement?

MR. DEVORA: Yes, Your Honor.

THE COURT: Do Plaintiffs have any other matters to raise under Rule 50(a)?

MR. DEVORA: No, Your Honor.

THE COURT: Let me hear from Defendants in the same manner.

What issues do you intend to raise and what specific relief are you asking for under Rule 50(a)?

MS. COOKE: Good afternoon, Your Honor.

Defendants intend to move under Rule 50(a) on the claims of direct infringement, the claims of indirect infringement, the claims of contributory infringement, Plaintiffs' claim for injunctive relief, patent exhaustion, willfulness for patent infringement, and exceptional case combined, patent damages --

THE COURT: Just a moment.

What else after patent damages?

MS. COOKE: Plaintiffs' breach of contract claims, conspiracy.

THE COURT: What type of conspiracy? Conspiracy to commit what?

MS. COOKE: Conspiracy to infringe the patent, conspiracy to commit -- sorry, excuse me, Your Honor, conspiracy to commit patent infringement, conspiracy to breach contract, and conspiracy to commit tortious interference.

Also the claims of tortious interference, assisting and encouraging tortious interference, Plaintiffs' claim for attorney's fees, and exemplary damages.

And jurisdiction, Your Honor, specifically personal jurisdiction.

THE COURT: All right. Anything further?

MS. COOKE: No, Your Honor.

THE COURT: Let me say at this juncture the Court intends to hear argument and give you direction from the bench. However, the Court reserves its prerogative to support whatever rulings you get from the bench with a reasoned opinion setting forth both the applicable precedence and the Court's specific analysis. But I'm not going to make you wait to get that to see what the Court's rulings are going to be.

But the fact that I'm giving you rulings from the

bench this evening don't preclude the Court's prerogative to more fully and in a more fulsome manner set forth its relied upon authorities and analysis.

All right. I think the most efficient way to do this is to take those areas that are common to both sides where each is asking for effectively the opposite relief under Rule 50(a) and let me hear arguments from both sides concurrently from the podium.

Let's start with the issue of direct infringement, and I'll hear from both Plaintiffs and Defendants on their respective positions with regard to that issue first.

And if whoever is going to present for both Plaintiffs and Defendants would simply go to the podium together, I'll hear from both of you in immediate succession. So let's start with that.

And let me hear first from Plaintiff on their position with regard to direct infringement.

MR. DEVORA: Thank you, Your Honor.

THE COURT: Go ahead, Mr. Devora.

MR. DEVORA: For direct infringement, Your Honor, we believe that there's enough evidence in the record right now to -- for judgment on this issue.

First, there's evidence of the sales ledgers, the FedEx emails, and emails from employees of HiCon Limited to customers in the United States soliciting and actually

showing sales of the accused products in the United States, which were unauthorized sales by HiCon Limited, Your Honor. That includes testimony by both the Defendant, Mr. Hwang, and Mr. Paul Schubring, Your Honor.

That's all I have, Your Honor.

THE COURT: Let me hear a response and counter argument from Defendants.

MS. COOKE: Your Honor, we request judgment as a matter of law on the issue of direct infringement against HiCon Company Limited. There has been no substantial evidence entered into the record that HiCon Limited sells, offers to sell, or imports any of the accused products into the United States.

All the evidence entered at trial points to sales being made through Mr. Hwang's DBA. The only evidence identified by Plastronics are the invoices which Mr. Schubring testified about today, which identify HiCon USA as the importer and specific -- the person who pays to have the products imported into the United States.

Plastronics has offered no evidence to contradict those facts.

HiCon Limited does not sell, offer to sell, or import. All those sales are made through Mr. Hwang's DBA.

THE COURT: Anything further?

MS. COOKE: Your Honor, in addition to those,

there's no substantial evidence that Limited sells or imports into the United States. Specifically with respect to HiCon USA, HiCon USA takes title to the products in Korea after -- prior to their importation in the United States, thus they are separate and apart from whether the DBA and HiCon Limited is the party to the Distribution Agreement.

THE COURT: All right. Anything else, Ms. Cooke?

MS. COOKE: No, Your Honor.

THE COURT: Okay. I think it'd be appropriate next to hear the parties' arguments with regard to personal jurisdiction. That may impact other matters.

Let me hear from Plaintiff first on this, and then Defendant. I assume this runs to HiCon Co. Limited. Is that the target of the personal jurisdiction claims --

MR. DEVORA: That's correct, Your Honor.

THE COURT: -- or dispute? Okay. What's Plaintiffs' posture, counsel?

MR. DEVORA: Thank you, Your Honor.

There's been enough evidence in the record here at trial to show that this Court should exercise personal jurisdiction over the Defendant, HiCon Limited.

First is the signing of the Micron NDA. Micron has a location, I believe, here in Allen, Texas, which would subject -- which shows that they intentionally subjected themselves to the laws of the state of Texas.

Further is the HighRel NDA. Again, it's another American entity through which they contract and avail themselves to the laws of the United States.

Third, with regard to NXP, which has an office here in Austin, Texas. Mr. Schubring testified here at trial today that all the Defendants are partners, and they approached NXP -- I believe it was shown PX-902 -- and approached customers at BiTS in 2018 to -- to specifically solicit the accused devices.

Mr. Schubring then admitted on the stand that they approached NXP in Austin in 2017, which, again, shows that the Defendant, HiCon Limited, purposefully availed itself to the state of Texas. And that meeting with NXP in Austin in 2017 was about H-Pins, which are the accused devices in this -- in this suit, Your Honor.

THE COURT: Let me hear from Defendants, please.

MS. COOKE: Your Honor, even though the Court ruled early on in this case that Plastronics had met its prima facie case and burden to show personal jurisdiction over HiCon Limited, that ruling does not relieve Plastronics of its burden to prove personal jurisdiction by a preponderance of evidence at trial.

Plastronics has not offered any evidence during trial that shows HiCon Limited sales into Texas in a way that the accused device -- excuse me, that there is no

evidence that the accused device has been sold in Texas.

Plastronics offered no evidence that HiCon Limited intentionally targeted sales of the infringing products to Texas. And what the true issue here is the actual connection to Texas, not the United States.

This requires actual sales in Texas. And this is different from going to trade shows and whatnot. And I would propose, Your Honor, that counsel even in his argument hasn't differentiated between Limited and Mr. Hwang's sole proprietorship. There's simply just no evidence that the Limited has intentionally and systemically directed products towards Texas.

In addition, Your Honor, HiCon USA's contacts are not reoccurring to the extent that counsel has argued that some sort of relationship with HiCon USA leads to personal jurisdiction.

THE COURT: Tell me why the meeting in 2017 in Austin that undisputedly dealt with the sale of H-Pins does not achieve necessary showing to establish personal jurisdiction.

MS. COOKE: Your Honor, that's HiCon USA's meeting, which has no relationship with HiCon Limited or Mr. Hwang's DBA.

THE COURT: Well, I understand the meeting involved Mr. Schubring who is a HiCon USA officer. I'm not

at all sure that that means there's absolutely no involvement or connection with HiCon Company Limited.

MS. COOKE: Your Honor, I -- I would -- would just say that substantial evidence hasn't been shown that there have been contacts with Texas -- an intent to send products into Texas by HiCon Limited.

THE COURT: And there does not seem to be any dispute. And if you see it differently, please tell me, Ms. Cooke. But does not seem to be any dispute that the manufacturer of the H-Pins that would have been discussed in that meeting in Austin is HiCon Company Limited.

MS. COOKE: That's correct, Your Honor. But, again, that meeting is based on HiCon USA. And HiCon USA's connection to Texas is not the issue. We need a Limited contact.

THE COURT: But the meetings was about the sale of H-Pins manufactured by HiCon Limited in Texas, even though an officer of HiCon USA was there at the meeting, correct?

MS. COOKE: Correct, Your Honor, but that's not HiCon Limited intending to sell products into the United States -- into Texas.

The fact that a separate and apart entity discussed sales in the United States doesn't impugn that on Limited who has never directed its sales to the United States.

THE COURT: All right. Do you have anything to add in addition, Mr. Devora, before we move on?

MS. COOKE: If I may, Your Honor, I have one point.

THE COURT: That's fine. Go ahead and make your additional point, Ms. Cooke.

MS. COOKE: In addition, no evidence that Mr. Hwang authorized or targeted that meeting. It's HiCon Limited. There's no evidence that HiCon Limited authorized or targeted that meeting.

THE COURT: What about the Distribution Agreement? I understand there's a dispute about whether the active party in that is HiCon, the DBA, or HiCon Company Limited. But to the extent it's HiCon Company Limited, what about the Distribution Agreement that facilitates the sale by that actor of product that would reach the United States, including Texas?

MS. COOKE: Well, I think the first fundamental issue with that is that the evidence has been made clear that the party to the Distribution Agreement is HiCon, the DBA. And so just posing a hypothetical that it might be the Limited, I would suggest --

THE COURT: You don't believe that's a disputed issue in the case?

MS. COOKE: It is a disputed issue, Your Honor.

That's, obviously, one of our points we'd like to raise on JMOL.

But simply entering into a contract with a party that isn't located in the United States, that just doesn't meet the -- the preponderance of evidence requirement that HiCon Limited intentionally direct its product to the state of Texas.

THE COURT: All right. Anything further from Plaintiffs on this issue?

MS. COOKE: No, Your Honor -- oh, I'm sorry.

THE COURT: Mr. Bear?

MR. BEAR: Thank you, Your Honor.

I would also point out that there was deposition testimony read into the record from Mr. J.T. Kwon and Mr. J.B. Hwang who both admitted that they are only employees of HiCon Co. Limited.

Additionally, the Court may recall that both of those individuals admitted going to BiTS USA to market the accused products and other types of products which shows a purposeful availment of the United States of America.

In addition, Your Honor pointed out the Distribution Agreement. It is certainly a jury question at this point whether that agreement is, in fact, referring to HiCon Co. Limited, given the inconsistencies of language that was pointed out in vigorous cross-examination by

Mr. Schubring.

Given all these things together, there's purposeful availment of personal jurisdiction of HiCon Co. Limited sufficient for the Court to exercise personal jurisdiction over the corporation.

THE COURT: All right.

MS. COOKE: Your Honor, if I may respond briefly?

THE COURT: Briefly. We still have a lot of ground to cover.

MS. COOKE: I'll point out, Your Honor, that the BiTS Conference was not in Texas. And simply availing yourself to the United States is not the standard at issue for personal jurisdiction. It would have to be directed at the state of Texas.

THE COURT: All right. Let's move on.

Let me hear competing arguments from the parties on -- I'll call it indirect infringement, whether it's contributory infringement or infringement by inducement.

I'd like to hear your arguments on any indirect infringement theories.

I'll start with Plaintiff and then hear from Defendants.

MR. DEVORA: Thank you, Your Honor.

Plaintiffs' position is that there is sufficient evidence in the record to show inducement by Mr. Hwang's DBA

to induce infringement by HiCon USA, HiCon Company Limited, and/or HighRel.

Even if it is determined that the DBA is a party to the Distribution Agreement, he's still acting on behalf of HiCon Co. Limited.

THE COURT: Mr. Devora, I'm about 10 feet from you, and I'm having to strain to listen. Pull that microphone over closer, please, sir.

MR. DEVORA: Sorry, Your Honor.

So even if the DBA is a party to the Distribution Agreement, the DBA is still acting on behalf of HiCon Limited. The only reason for the existence of the DBA is to do business on behalf of HiCon Limited.

Further, the tax invoices that were shown -- that were entered into the record do not conclusively show that a chain of title or a transfer of title of the accused products from HiCon Limited to the DBA ever took place.

There's no evidence to show, for example, that any, quote, unquote, socket actually made its way from that tax invoice to the United States. There's no evidence to show that a transfer of title happened on the accused devices from HiCon Limited to HiCon, the DBA.

Therefore, the proper -- proper title of those goods -- of the accused devices was still with HiCon Limited even though Mr. Hwang may have sold these devices into the

United States.

HiCon Limited still had proper title to the accused devices, and that's -- and those -- and that is those accused devices -- HiCon Limited's accused devices that have been sold in the United States.

THE COURT: Anything further?

MR. DEVORA: No, Your Honor.

THE COURT: Let me hear a response from Defendants, please, together with, of course, any affirmative arguments you want to put forward.

MS. COOKE: Yes, Your Honor.

I'd like to start off by saying that it is not Defendants' burden to prove conclusively that there is no induced infringement. The burden lies on Plaintiffs to prove there was infringement.

Starting with indirect infringement by HiCon Limited, based on the infringement of Mr. Hwang's DBA, we request that the Court grant judgment as a matter of law that there is no indirect infringement by HiCon Limited based on any direct infringement by Mr. Hwang's DBA.

The Court has already ordered in Docket 278 -- excuse me, I think that's 287 -- that the DBA of Mr. Hwang cannot infringe the '602 patent, and, therefore, there is no underlying direct infringement sufficient to maintain the claim of direct -- indirect infringement against HiCon

Limited based on a direct infringement of the DBA.

THE COURT: Well, are you telling me if I were to agree with you, that the DBA, which is Mr. Hwang, who has, I think, undisputed rights in the patent-in-suit, couldn't commit infringement of the patent in which he owns a 50 percent interest? Are you telling me there's no other source of direct infringement that would support an induced or indirect infringement claim? Just because it's not coming from Mr. Hwang, DBA, or may not be coming from Mr. Hwang, DBA, does that mean it can't be somewhere else?

MS. COOKE: Yes, Your Honor. And I'll address those issues, as well.

THE COURT: Please.

MS. COOKE: Specifically with respect to Mr. Hwang's DBA being the source of direct infringement, the current and already entered orders of this Court preclude that theory from moving forward. Mr. Hwang can't infringe. There can be no direct infringement based on Mr. Hwang's activities.

Additionally, Your Honor, there can be no indirect infringement against HiCon Limited based on the infringement by HiCon USA or HighRel. There is no evidence in the record that HiCon Limited did anything.

Mr. Paul Schubring testified that HiCon USA did business with Mr. Hwang, his DBA. Entered into the evidence

were emails and a Distribution Agreement which Mr. Schubring testified at length his understanding that he entered into an agreement with Mr. Hwang's DBA.

Plaintiffs have offered no contrary evidence that HiCon Limited induced any other authorized sales into the United States.

The substantial evidence shows that all asserted patent rights are also exhausted because HiCon USA and HighRel import the accused products through the DBA. And so, therefore, any sales that route through Mr. Hwang's DBA are also exhausted.

There's also no substantial evidence that HiCon Limited intended to cause infringement. That goes to the intent element required for induced infringement. All the evidence is to the contrary that Mr. Hwang and HiCon Limited, to the extent it was an actor, went out of its way to avoid infringing by totally changing the way he planned to do his business.

Your Honor, we also would like to move on indirect infringement against Mr. Hwang's DBA. And this is based on direct infringement, again, of HighRel and HiCon USA, but it would be Mr. Hwang's DBA that would be liable.

Again, a patent -- this is what I think Your Honor was addressing. A patent owner -- we found no authority and nor has Plaintiff cited any authority that a patent owner

can be liable for induced infringement. It just goes against the basic logic of patent rights.

That's not to say that in the appropriate circumstances and under the right terms, it wouldn't be potentially a breach of contract, but simply saying that a patent owner cannot be liable for induced infringement on its face.

This is also true because all of the sales necessarily flow through Mr. Hwang's DBA. Because Mr. Hwang's DBA has rights to practice the '602 patent and the Korean patent, all such rights downstream are exhausted.

HighRel and HiCon USA are actual importers of the products, not Mr. Hwang's DBA. And a finding that a patent owner can be liable for indirect infringement would be inconsistent with the provisions in 271(d).

That provision specifically excludes licensing and authorization of another to perform acts. If they are performed without the owner's consent, would constitute contributory infringement of the patent for a legal extension of patent rights.

So it's basically that principle that a patent owner can license and authorize other people. And if he had not had that authority, it would be contributory infringement. And I think that's exactly where we find ourselves today, that Mr. Hwang owns rights in the patent.

He's authorized to give and practice that patent, and simply cannot be liable for inducing others to infringe rights he has himself.

I have one additional one, Your Honor. Plaintiffs' contributory infringement claim is not included in the jury charge. It's our understanding that this has been abandoned. And I think we should probably all agree that that's been dropped.

To the extent that Plaintiffs don't agree, there hasn't been any evidence whatsoever entered into the record, and it simply just doesn't make sense. Contributory infringement generally goes to the issue of importing a portion of an accused product and assembling it in the United States. And that's just simply not the facts here.

THE COURT: Well, let me ask Mr. Devora. Does the Plaintiff maintain that there's a live contributory infringement claim here?

MR. DEVORA: May I confer briefly with my co-counsel?

THE COURT: You may.

MR. DEVORA: Your Honor, Plaintiffs are going to withdraw their claim for contributory infringement.

THE COURT: All right. I'll consider that any claims by Plaintiff for contributory infringement are no longer live in the case and have been abandoned and/or

withdrawn.

MR. DEVORA: Thank you, Your Honor.

THE COURT: Anything else related to the overall issue of indirect infringement from either Plaintiffs or Defendants?

MR. DEVORA: Yes, Your Honor.

Again, this goes back to chain of title. Mr. Hwang, whether personally or through his DBA, cannot sell something which he does not have. It cannot be a proper sale to the United States of that accused device, therefore, triggering any patent exhaustion defense, for example, because he does not have proper title to those accused devices.

There's no proper title transfer from HiCon Limited to HiCon the DBA. The accused device still is titled to HiCon Limited, and, therefore, is a device of the accused -- of HiCon Limited.

So even if he were to purport to make a sale, that chain of title has not been transferred. So the accused devices from HiCon Limited to the DBA.

THE COURT: Anything further from Defendants, Ms. Cooke, on indirect infringement?

MS. COOKE: Yes, Your Honor.

MR. DEVORA: One more quick point, Your Honor, and I'll let Ms. Cooke.

The other piece of evidence that was entered into the record is the email from Mr. Hwang and I believe Mr. Schubring saying that there's a patent issue with respect to HighRel or HiCon USA. He makes the comment who will care? It shows intent to disregard the rights of Plastronics -- rights in the patent, and, therefore, shows inducing HighRel and/or HiCon Limited to infringe the '602 patent.

THE COURT: All right. Anything further from Defendants on this, Ms. Cooke?

MS. COOKE: Sure, Your Honor. I'm going to go back to the burden on infringement which lies on Plaintiffs' shoulders.

There's just no evidence in the record that Limited retains title to these products prior to shipment. The only evidence in the record is Mr. Hwang's testimony to the contrary and the documents in support. There is no evidence, other than title transferring to Mr. Hwang's DBA prior to shipments out of the country.

I would propose, Your Honor, that trying to shift the burden onto Defendants simply isn't standard. As we all know and we've heard the testimony to support it, these products, even if they are shipping from HiCon Limited to the USA, they -- the title has already transferred at the time that they leave Korea and passed into the United States

border. This is just simply insufficient to support a claim of indirect infringement.

THE COURT: All right. Next I'd like to hear argument from the parties on their competing positions with regard to willful patent infringement. I'll start with Plaintiff.

MR. DEVORA: Your Honor, on top of the arguments I made earlier with regard to direct infringement, as far as willfulness, again, Defendants point out there is sufficient evidence in the record.

Mr. Schubring and Mr. Hwang were well aware of the rights of Plastronics and the '602 patent. They deliberately went forth and sought out customers to sell and offer to sell the accused devices, namely, NXP in 2017.

Further, again, going back to the "who will care" email, it's a wanton disregard and willful disregard of Plastronics's rights in the '602 patent. That shows a specific intent to show -- specific intent to infringe the '602 patent.

Thank you, Your Honor.

THE COURT: What's Defendants' posture?

MS. COOKE: Your Honor, simply, the standard that Plaintiffs have relied on is -- is not the proper one to apply for willful infringement.

The proper standard to apply is evidence of

egregious or spiteful conduct to support willfulness. It's under the Halo case.

The evidence showed that Mr. Hwang at every turn in this case in his -- in this issue has tried to comply with both the Assignment Agreement and the Royalty Agreement and his obligations under both of those agreements with respect to patents and associated infringement.

Mr. Schubring testified today that he would never intentionally try to commit patent infringement. And, in fact, the only evidence that has been entered into the record of any sort of spiteful conduct is by -- on behalf of Mr. Pfaff, not Mr. Hwang. Mr. Hwang sought out counsel of his own attorneys in Korea. He at every turn tried to work things out with Mr. Pfaff. And he today has testified that he has done everything in his power to resolve those agreements without dispute. And most certainly cannot meet the standard of egregious and spiteful conduct required for a finding of willful infringement.

THE COURT: Mr. Bear?

MR. BEAR: Your Honor, I think some of the evidence I'm about to mention will go to a couple of issues, but specifically for this one with willfulness, I would point the Court to the cross-examination of Mr. Schubring today and his admission that the very first thing when he was dealing with the Distribution Agreement was to ask about

the patent issues with David -- David being Mr. Pfaff.

Additionally, we showed full knowledge of the '602 patent, full knowledge of the restrictions on transfer.

You know, Ms. Cooke's statement's about Mr. Hwang's subjective state of mind is a credibility determination for the jury to make. And, therefore, the jury is free to believe or disbelieve and also to infer that perhaps Mr. Hwang is actually actively misleading them as to his intent.

Moreover, Your Honor, this is not just speculation on my part. I would point the Court to PX-922, the BiTS email, where Mr. Hwang on behalf of -- through his son, J.B. Hwang, instructed Mr. Schubring to take down displays at the BiTS conference in response to this lawsuit.

Additionally, Your Honor, the jury will see in that email that there was also express direction from Mr. Hwang to do deals in back rooms.

Given the totality of the evidence and the intent to conceal, the jury can make a very strong reasonable inference that Mr. Hwang intentionally sought to violate the patent by making unauthorized sales. And, therefore, the jury should be able to hear this claim and be instructed upon it.

THE COURT: All right. Next I want to hear argument from the parties with regard to Defendants' motion

under Rule 50(a) concerning injunctive relief.

I assume Defendants have --

MS. COOKE: I didn't hear you, Your Honor.

THE COURT: -- I assume Defendants are moving for a judgment as a matter of law that injunctive relief --

MS. COOKE: Yes, Your Honor.

THE COURT: -- does not lie, notwithstanding a determination of infringement?

MS. COOKE: Yes, Your Honor.

We acknowledge that this motion may be a bit premature. But Plastronics -- but, here, Plastronics has pled for injunctive relief, and there are just clearly remedies at law. We've all stood here in court and listened to them ask for damages. They're asking -- they've provided no evidence of irreparable harm. Clearly an adequate remedy of law exists, and no evidence has been put on to the contrary.

THE COURT: Plaintiffs?

MR. BEAR: Your Honor, injunctive relief is not necessarily precluded just because a party may have damages.

In this case, injunctive relief would be appropriate given the difficulty in collecting against a Korean-based company. Although they have stated that HiCon DBA has a bank account in the United States of America, it is also true that HiCon Co. Limited is within the Republic

of Korea. Although we believe -- and we believe that there is substantial and strong evidence of personal jurisdiction, the reality is the practical difficulties of enforcing any type of damage award would be difficult.

Therefore, an injunction within the jurisdictional territory of this Court, which is the United States of America, would be appropriate to prevent any type of importation within the United States.

Therefore, in order to effect meaningful relief for the Plaintiffs, given the substantial evidence of infringement, an intentional and willful infringement would be to have the Court in its discretion and powers grant an injunction to permanently enjoin HiCon Co. Limited from directly importing or being induced to import accused devices into United States of America without authority.

THE COURT: Anything further on this from Defendants?

MS. COOKE: Yes, Your Honor.

A claim for injunctive relief requires a showing of harm, and Plastronics hasn't shown any.

Also, an injunctive relief claim requires a showing of inadequate remedy at law. Plaintiffs have stood up here and for the last several days told us how much money they value their case. There is an adequate remedy at law, and it -- and it's just -- without -- you can stand up and

say there's an adequate remedy at law. There's just simply no way to also argue an inadequacy of that.

And coming in after the fact and suggesting it's based on Mr. Hwang's bank accounts and whatnot when he has brought himself here to this Court to have his trial is just conjecture. It's Plaintiffs' burden to prove it. They have to prove inadequate comp -- excuse me, they have to prove an inadequate ability to collect and be compensated for their injury.

This requires both that there is a harm and that there is some inadequateability to collect that. And that's just not been shown.

THE COURT: All right. Also, Defendants have moved, if I understand it correctly, for judgment as a matter of law with regard to an award of fees under Section 285 of the Patent Act.

MS. COOKE: Yes, Your Honor.

THE COURT: I don't know how the Court could properly take that up under Rule 50(a) pre-verdict.

Does Defendant have any basis upon which the Court, without knowing who the prevailing party is, can properly take up and rule at this stage on a 285 motion?

MS. COOKE: Sure, Your Honor. We understand that the Court has already reserved its decision on attorneys fees. But the contract claims in this case upon which those

attorney fees are based fail for the reasons that we'll discuss during this hearing.

And there are no remaining bases by which to seek those fees, so because there is no breach of contract and there are no damages, there simply can be no fees.

THE COURT: Well, maybe we're talking about different things, counsel, but I assume we're talking about a request that the Court find that this is an exceptional case under Section 285 of the Patent Act and award fees to the prevailing party.

I guess maybe what you're asking me to do is let you win the case on Rule 50(a) and as a part of it, award 285 fees as an exceptional case at this juncture.

But unless the Court effectively disposes of the case as a whole at this juncture, how could I properly consider a motion under 285?

MS. COOKE: Your Honor, these attorney fees' are for Plastronics's claims that HiCon Limited, HiCon, and Mr. Hwang's DBA breached contract.

THE COURT: So you're not seeking a recovery under Section 285 of the Patent Act?

MS. COOKE: No, Your Honor.

THE COURT: Okay. I had 285 written down. I may have misheard you, but I'll take you at your word.

MS. COOKE: That, Your Honor, is that they can't

demonstrate that the case is exceptional.

THE COURT: So you're asking me to find as a matter of law at this juncture that the case isn't exceptional, as opposed to asking me to find that it is exceptional? I'm confused. What -- what are you -- what's Defendant asking for?

MS. MCCOMAS: This was my fault, Your Honor. I put it on our list and didn't explain very well.

Really, we're focused on the state law claim for attorneys fees, under Chapter 38 --

THE COURT: Which is something totally different than a recovery for 285 for an exceptional case?

MS. MCCOMAS: It is. And so it's on our list of claims that they've made, and we're checking it off. But under Chapter 38, you can't recover attorneys' fees unless, one, you win on breach of contract -- excuse me, I'm sorry, I have laryngitis -- and, two, you have to actually recover damages.

And when Ms. Cooke finishes her -- when she finishes her arguments today, you're going to learn that there's nothing left on the contract except for perhaps an accounting. And the accounting doesn't have any damages tied to it. So if we take those in the right order, there may be an argument that is worth considering.

THE COURT: All right. Well, for purposes of

where we are now, with the parties seeking relief under Rule 50(a), I'm going to consider that either a motion for exceptional case status under Section 285 has been withdrawn or I'll deny it without prejudice.

I will not foreclose the possibility of either side, in light of what verdict may be returned at a later date, an appropriate time seeking relief under Section 285 for exceptional case status.

I'm going to deny it at this stage under Rule 50(a), but without -- without foreclosing the possibility that after the return of a verdict, a proper 285 motion could be made, okay?

MS. COOKE: Thank you, Your Honor.

MR. BUNT: Your Honor, may I interrupt for just a moment?

Would it -- would it be possible for Mr. Dalton to go back to our offices? He's not going to be participating in any of the JMOL hearing.

THE COURT: As long as each side is adequately staffed at this process, the rest of you are free to leave.

MR. BUNT: Thank you, Your Honor.

MR. DALTON: Thank you, Your Honor. May I be excused now, sir?

THE COURT: You may.

MR. DALTON: Thank you.

THE COURT: Mr. Dalton, before you leave, do we know at this juncture who will be presenting closing arguments for Plaintiff, or is that a premature decision?

MR. DALTON: That will be me, Your Honor.

THE COURT: Both the first and the second Plaintiffs' closing?

MR. DALTON: That's correct, Your Honor.

THE COURT: Okay.

MR. DALTON: Thank you.

THE COURT: You certainly can spend your time preparing for that.

MR. DALTON: Thank you.

THE COURT: You're excused.

MR. DALTON: Thank you.

THE COURT: Let me ask you this, Mr. Bunt. Since we've paused in the 50(a) process, we are now 22 minutes after 5:00.

Where are Plaintiffs as far as submitting the updated jury charge and verdict form that I instructed both sides on yesterday to be done by 5:00 o'clock today?

MR. BUNT: We are still working on it. I believe our paralegals are in the break-out room working on it. I think Mr. Devora may be able to provide some insight into what has happened with the papers.

MR. DEVORA: Yes. So we received Defendants'

proposed amended jury instruction and verdict form in the middle of the night. We have been working throughout the day to get our edits back to -- to the Defendants for their consideration.

We have not been able to get a -- a Word version of the marked up -- of the mark-ups. We've received the mark ups in PDF form, but, obviously, have not been able to use that mark-up version in Word. So we're working diligently to try and figure out what changes have been made so we can provide our input now and hopefully allow Defendants to review before we submit it to the Court.

THE COURT: Why would Defendants have given Plaintiffs their version in a non-editable PDF, as opposed to Word?

MR. DEVORA: For clarification, they did give a clean version in Word, and they gave a mark-up version in PDF.

MS. MCCOMAS: Your Honor, may I approach? This is what we gave them at 2:00 a.m.

THE COURT: Well, let me just say this. When we finish the motions under Rule 50(a), I want what the parties have, whether it's completely ready or not, as far as a joint submission for an amended and updated final jury instruction and verdict form.

MR. DEVORA: Understood, Your Honor.

THE COURT: And your remaining trial teams can continue to work on it in the interim, okay?

MS. MCCOMAS: To clarify, I feel like I've been impugned a little bit. We gave them a Word version, and we gave them a redline of everything we changed. There's a lot of colors, so I'm not blaming anybody on not being able to read it. We gave them a very -- what I thought was a substantially complete version, admittedly in the middle of the night, but -- and have tried to confer on specific issues all day. And they just haven't sent it back to us.

THE COURT: All right. Well --

MS. MCCOMAS: We do have the verdict if -- and I think they've agreed -- oh, this is the one I sent you. I don't have yours.

MR. DEVORA: Yes, we have sent back our proposed verdict form. And I believe we have juxtaposed each of our respective proposed verdict forms against each other with -- organized by cause of action. So we have exchanged those, Your Honor.

THE COURT: Well, continue to work on it, but when we finish the process of taking up and considering the Court ruling on these 50(a) motions, I'm not going to be able to indulge the luxury of continuing to let you work on it. I'm going to need whatever you have in whatever form it's in, okay?

MR. DEVORA: Understood, Your Honor.

THE COURT: All right. Let's return to the motions under Rule 50(a). And I think it goes without saying that whatever I get needs to be in Word format so that it's --

MS. MCCOMAS: Yes, sir, it was, I promise.

THE COURT: All right. Before we get into the motions under Rule 50(a) related topically to breach of contract and tortious interference, there are some motions still pending, as I understand it, with relation to damages issues concerning the patent claims.

Let me hear what the parties' motions related to patent damages might be under Rule 50(a), and let's take those up next.

Defendants -- excuse me, Plaintiffs have indicated that they have a motion with regard to Defendants' claim for damages. I assume that's patent damages.

And Defendants have indicated they have a motion under Rule 50(a) regarding patent damages.

So clarify both of -- clarify for me what both parties are seeking as far as relief under 50(a) in that regard.

MR. DEVORA: With respect to damages, Your Honor, Plaintiffs are moving for JMOL on Defendants' claim for damages under their breach of contract theories, not our --

not our patent infringement damages.

THE COURT: Well, let's save -- let's save breach of contract until we complete an argument on all the patent-related issues.

MR. DEVORA: Understood.

THE COURT: Do Defendants have a motion for relief under Rule 50(a) regarding damages related to patent infringement?

MS. COOKE: Yes, Your Honor.

THE COURT: Let me hear from you on it.

MS. COOKE: Substantial evidence shows that Mr. Hwang and his DBA, foreign damages for Plastronics's -- allegations of foreign damages are unsupported by the evidence of domestic infringement.

Under the WesternGeco case, there are -- damages are allowed for foreign activity only when there is evidence of an underlying act of domestic infringement. For the reasons that we've just laid out for Mr. Hwang's Asia sales, those products never touch the United States when they come -- I'll rephrase that.

When Mr. Hwang sells his products in Asia, those products never make it to the United States. And so, therefore, under the underlying act of domestic infringement and foreign damages are just unsupported as a matter of law.

In addition, Your Honor, we propose that there is

no evidence of a two-market -- two-player market, and there has been insufficient evidence of causation associated with patent infringement.

THE COURT: What's Plaintiffs' response?

MR. BEAR: Your Honor, WesternGeco is the case in question. And I believe that today with Mr. Schubring, we established a sufficient nexus within the United States to make international infringement a foreseeable and proximate cause.

You may recall, Your Honor, that when we -- when I was cross-examining Mr. Schubring, he admitted that there is a qualification process that occurs throughout the United States and including specifically Texas, with NXP, and that that qualification is a requisite that must be found in order to sell throughout their entire market in -- internationally.

WesternGeco, as Your Honor may recall, involved an issue of international usage that originates or at least has a firm nexus within the United States. There is now evidence within the record to establish that, Your Honor, given the qualification process. And it will become a jury issue to determine the credibility of that, and I believe that the jury should be instructed.

As to the latter issue with regards to two-party market, there are competing experts in this case. And it is

up to the jury to decide whether Mr. -- Dr. Woods or Mr. Perry's analysis of the two-player market is credible.

Additionally, there is substantial evidence to establish a two-party market. Your Honor may recall that the only two manufacturers of H-Pins in the entire world are Plastronics H-Pin and the Defendant HiCon Co. Limited. That is a fact that is not contested at this point. And, therefore, the jury can make a determination of the competitiveness with other types of pins.

Additionally, Your Honor, I'd point out the inconsistencies on the facts from Plaintiffs, given the laudatory praises of the H-Pin and its revolutionariness, but established that there is a clear preference within the market to support Mr. Perry's analysis. I believe the jury should be instructed on it.

Thank you.

THE COURT: Anything further from Defendants on this?

MS. SIVINSKI: Your Honor, the Magistrate Judge's ruling that Your Honor confirmed says that there's a fact issue about whether there's an underlying act of domestic infringement. For example, if under the Distribution Agreement an infringing product is sold or imported into the United States and then further sold into Canada or Mexico, that that may be an underlying act of domestic infringement

to support lost sales in Canada or Mexico, for example.

There's no evidence that any of the sales that either HiCon party made, depending on the resolution of that fact issue, that any of those foreign sales first touch the United States first. I don't quite -- I don't think I quite track Mr. Bear's argument that a product being qualified in the United States is somehow an underlying act of infringement.

There was no evidence that a product was imported into the United States and then sold back outside of the United States by HiCon Co. Limited, or HiCon, whichever -- entity is applicable.

THE COURT: Can you -- can you address that briefly, Mr. Bear?

MR. BEAR: Yes, Your Honor.

I'd point to two pieces of evidence within the record and also a proposition of law.

Certainly, you know, there is an offer of sale that is being made through the qualification process within the United States.

Moreover, I would direct the Court to the Distribution Agreement -- and I apologize, I don't have the exact section number -- but we went through it with Mr. Schubring on cross-examination. And there is a specific clause that states that HiCon USA is entitled to proceeds

for sales that are qualified from the United States -- from its territory, if they're international.

Given this and given the fact that as Defendants have clearly argued, that there is a chain of title through HiCon USA and HighRel, I believe that there is sufficient evidence to fall within the purview of WesternGeco and, therefore, I reiterate that the jury should be instructed on this damage amount.

THE COURT: All right. Let's move on to the next issue.

MS. DERIEUX: May I be excused, Your Honor?

THE COURT: You may, Ms. DeRieux.

MS. DERIEUX: Thank you.

THE COURT: Let me ask this for clarification. Is either party aware of matters that have been urged by either or both sides under Rule 50(a) that relate to the general area of patent infringement that the Court has not taken up or considered or heard argument on? If not, we'll move on to the breach of contract issue.

MS. COOKE: The only one left I have, Your Honor, is exhaustion of the '602 patent.

THE COURT: I thought we'd heard argument on that.

MS. COOKE: If we have, then that's fine.

MR. BEAR: I think we took it up with direct infringement.

MS. COOKE: I have an independent one for that. If Your Honor has felt like we've addressed --

THE COURT: If you want to make an independent argument briefly, I'll let you.

MS. COOKE: Your Honor, Defendants have moved with an affirmative defense of exhaustion. The substantial evidence shows that products made by HiCon Limited are sold through Mr. Hwang's DBA.

Since the DBA is authorized, all downstream sales into the United States would be exhausted -- would be applicable to HighRel and Hi -- HiCon USA.

THE COURT: All right. Anything else from Plaintiffs on this?

MR. BEAR: Your Honor, I'll be very brief, and I promise it is true this time.

For the same reasons --

THE COURT: Going to be true one of these times.

MR. BEAR: One of these times, yes.

Your Honor, for the same reasons that we believe there's a genuine issue of material fact of infringement, exhaustion cannot occur if the sale in question was actually made by HiCon Co. Limited.

There is enough evidence within the record for that to be a jury question, and, therefore, it'd be inappropriate to grant an affirmative defense of which they

bear the burden on when there's substantial evidence for the jury to find against it.

THE COURT: All right. Let's move on, unless there's something else.

Let me hear from the parties on their competing positions under Rule 50(a) with regard to the Plaintiffs' breach of contract claims.

MR. DEVORA: Thank you, Your Honor.

I believe there's sufficient evidence in the record to show that we believe we're entitled to judgment as a matter of law on our breach of contract claims, specifically for licensing the Korean patent.

The Korean license is still in effect today. We've heard testimony on that by Mr. Hwang admitting to that fact. Given that there's a license within the statute of limitations within the last four years, the license is still in effect. So, therefore, there has been a license within the statute of limitations that -- that amount to a breach of contract.

MR. BEAR: I apologize, Your Honor.

MR. DEVORA: Given that this license is still in effect, that license to -- from Mr. Hwang to HiCon Limited amounts to a breach of contract under the Royalty Agreement.

THE COURT: All right. Let me hear from Defendants.

MS. COOKE: Your Honor, I have these addressed in a little bit broken out fashion. If you don't mind, I can address them as the Korean patent -- or the Korean license issue, the ad hoc license issue, and then generally breach of contract claims if that makes sense for Your Honor.

THE COURT: Okay.

MS. COOKE: Specifically with respect to Plaintiffs' claim of breach of contract based on the license in Korea, the only theory that was pleaded by Plastronics was for a breach of contract based on the Distribution Agreement between HiCon USA or HighRel.

They have been urging the Court to allow it to pursue a breach of contract based on licensing this Korean patent, and this is simply an unpleaded theory that should be disposed of.

In addition, Your Honor, any breach of contract claim based on the Korean patent is barred by a four-year statute of limitations. As the Magistrate has already ruled, there is no continuing theory that allows extension of this statute of limitations for a breach of contract claim.

Given that Mr. Hwang entered into the Korean patent license in 2008, there is no dispute, that it is simply barred by the statute of limitations.

In addition, Your Honor, HiCon Limited sells

the -- in Korea. And Plastronics has shown, again, as we mentioned earlier, no damages based on actual activity within Korea.

Mr. Perry testified that he removed sales from his damage analysis for within Korea.

So pursuing any sort of breach of contract based on the Korean license should simply be disposed of as a matter of law.

THE COURT: All right.

MS. COOKE: Moving on.

THE COURT: Go ahead.

MS. COOKE: The next issue, Your Honor, is the breach -- breach of contract based on the ad hoc implied license.

Again, Your Honor, this is another theory that Plastronics had been urging that is not found within the scope of their pleadings. There actually is no such thing as an ad hoc de facto implied license, which is the actual language that they use.

Also, whether a license exists is a question of law for the Court, so we propose that now is as good a time as any to dispose of this issue.

Also, Mr. Hwang doesn't need a license to manufacture in Korea. As the evidence has showed, Mr. Hwang has rights to the patent and a hundred percent rights to his

Korean patent. So implying that there's some sort of breach of contract based on an implied license in Korea just simply isn't supported by the facts of law.

Also, it's an interesting situation because there is actually a Korean license. And so when there's a physical license, an express license, implying a theory of an ad hoc de facto license in the presence of an actual express license legally makes no sense. It's just -- there's no continuing tort theory, also like I had mentioned, that should apply to this, as well.

That's all I have for that one.

I'll move on to the larger claim, unless Your Honor has questions.

THE COURT: Go ahead.

MS. COOKE: The breach of contract claim against Hwang. Now, this is for the Distribution Agreement -- excuse me, the Royalty Agreement and the Assignment Agreement.

We request and move for judgment as a matter of law on these breach of contract claims for the following reasons:

We understand and acknowledge that ambiguity is an issue that goes to the jury, but it was established as a matter of law --

THE COURT: Please slow down just a little bit.

MS. COOKE: Yes, Your Honor.

THE COURT: It's been a long day.

MS. COOKE: I apologize, Your Honor.

It has been established as a matter of law that the term "third party" and "another entity" excludes any entity that Mr. Hwang controls.

Substantial evidence has shown that the parties intended to allow Mr. Hwang to sell himself and through his own company that he controls. This is evidenced by documents, emails, and Mr. Hwang's own testimony.

The only evidence that Plastronics has offered into the record to contradict these agreements and Mr. Hwang's own understanding is the parol evidence and testimony of Mr. Pfaff during trial. This is just simply insufficient to send the issue to the jury.

We have also established as a matter of law that the term "H-Pin Project" in the Royalty Agreement excerpt -- activity -- excuse me, excerpt's activities in Korea. Thus, Mr. Hwang has a hundred percent of his own patent rights.

We've seen multiple emails, testimony, and documents suggesting that Mr. Hwang and everybody agreed -- Pfaff, included -- that Mr. Hwang had -- entering into these two agreements, would retain his rights to practice in Korea.

All claims of breach of contract are also excluded

as a result of Plastronics's prior material breach. Specifically, Your Honor, Plastronics breached the Assignment Agreement by failing to provide Mr. Hwang with an accounting.

Any breach of contract claim against Mr. Hwang based on failure to provide an accounting was excused for Plastronics's prior material breach.

There is also insufficient evidence of damages for breach of contract.

Plastronics is asking for lost socket sales, but H-Pin is sole breach of contract Plaintiffs. So only H-Pin has challenged -- is party to the contract, and it is a breach of contract Plaintiff.

And evidence has established that H-Pin doesn't make or sell sockets. In fact, H-Pin sells its H-Pin 2 socket, and Mr. Furman admitted that H-Pin actually never lost any sales of sockets.

Again, Your Honor, we would propose that there is no evidence of a two-player market and insufficient evidence to establish causation.

Finally, with respect to the accounting agreement, there can be no evidence of the damages for the Assignment Agreement. Although Plastronics has challenged an alleged breach based on Mr. Hwang's failure to provide the accounting, we also remedied that during the course of

litigation, and Plastronics has since been provided an accounting. So there simply are no damages associated with the breach of the Assignment Agreement claims against Mr. Hwang.

Finally, Your Honor, limited -- any claim is limited to sales in Korea for which Plastronics, as we had just discussed, has shown no damages.

THE COURT: All right. What's Defendant -- excuse me, what's Plaintiffs' position?

MR. BEAR: Your Honor, where would you like me to start?

I will start with the fact that there is a credibility determination to be made here as to the ambiguity. Mr. Pfaff proffered his interpretation of the agreement. Mr. Hwang proffered his interpretation of the agreement. The jury is free to believe all, none, or part of anyone's testimony. And they're free to disbelieve Mr. Hwang in his entirety and believe Mr. Pfaff in his entirety. And, therefore, this idea that there is not a jury question about the interpretation of this contract when the two parties who signed it and drafted it have a dispute about those terms is not tenable, and, therefore, should be submitted to the jury.

Your Honor, as to the issue of a prior material breach, this touches on an issue that I believe came up over

cross-examination regarding the unpaid royalties that Mr. Hwang admitted that he had paid himself a royalty but didn't split it with Plastronics. We absolutely do not have any claim for it, Your Honor. But it is still probative for the jury.

If we can prove -- and I believe that there's evidence in the record -- that Mr. Hwang failed to pay a royalty, even if we don't have a claim for damages, it shows a material breach. And more importantly, it shows a material breach in 2009, which would preclude royalties being due under the interpretation of the Royalty Agreement by Mr. Pfaff.

Therefore, there's sufficient evidence within the record to find that Mr. Hwang's performance under the contract is not excused because he admitted on the stand under oath in this proceeding that he had breached it in 2009.

And I believe it's appropriate for the jury to hear that information, Your Honor. And even though we don't have a claim for damages, it should factor in, in that regards.

Regarding the -- the statute of limitations issue that was brought up, as briefed before the Magistrate, there are instances within Texas law that deal with continuing breaches and contracts that are divisible.

Within this case, there are clearly divisible parts of this contract and subsequent discrete acts that are at issue, especially when dealing with the licensing issue.

In fact, their entire theory of the case contradicts what -- their statute of limitations theory, and here's why. Under their theory, there has never been sales into the United States by HiCon Co. Limited. Instead, what they have urged this Court to believe is that HiCon Co. Limited stays within the -- within Korea and only practices the Korean license.

The moment -- if we can prove that during the statute of limitation's period that HiCon Co. Limited sells directly within the United States, that is the same effect as granting them an express license because it was directed to produce the accused products and ship them into the United States by Mr. Hwang.

And I believe that there's substantial evidence within the record regarding that.

Moreover, Your Honor, it is clear within the record that Mr. Pfaff never gave consent for Mr. Hwang to license any of the patents at issue, the Korean patent, or the -- the '602 patent in the United States to HiCon Co. Limited. And that has been very conclusively shown that Mr. Pfaff withheld his consent. And, in fact, is a theory of the case presented by the Defendants.

And, therefore, it'd be inappropriate to rule as a matter of law on any of the breach of contract claims. There are valid contacts. Those contracts are at issue. There is a dispute about the interpretation. And there's a dispute about the facts of whether there has been a license granted without authority to HiCon Co. Limited.

And, therefore, this issue should go to the jury, Your Honor.

I believe -- yeah, okay. Thank you.

THE COURT: All right. Anything further on this before we move on?

MS. COOKE: Your Honor, I would propose that submitting something to the jury that Plaintiffs have admitted they have no claim for, prior material breach or damages for, would be simply improper. Submitting something to the jury that Mr. Hwang committed a prior material breach is not something that Plastronics has ever claimed as a defense or affirmative claim. It's just not something that should go to the jury if it's unclaimed and we're hearing about it for the first time.

Also, Mr. Pfaff's testimony from trial is contemporaneous. Under the parol evidence rule when we're interpreting these contracts, we're looking at testimony, documents, emails, parties' positions at the time the contracts were entered into and kind, you know, local to

those times.

The fact that Mr. Pfaff sat on the stand and testified today that that was not his intent is completely outside the scope of what can be considered under the parol evidence rule. What can be considered --

THE COURT: So you're telling me if he testified today, what his intent was then, it can't be considered?

MS. COOKE: I think it's highly biased testimony in the face of documents that were entered into the record with both parties going back and forth, expressing their clear intent at the time the contract was entered into. I think that those documents would be much more highly persuasive in favor of a ruling as a judgment as a matter of law than a witness's biased testimony on the day of trial.

Lastly, Your Honor, the Magistrate has already ruled that there's no continuing tort theory applicable to breach of -- of contract based on these licenses, so any breach of contract based on this Korean license that occurred in 2008 is barred.

THE COURT: I've read the Magistrate's report and recommendation on that carefully. I do not read it as Defendants read it. While the initial breach may be beyond the statute of limitations and barred, each subsequent breach, there is a basis, in my view, upon which recoveries within the four-year statute are still available or still

can be breached.

Failure to pay royalties can still be recovered even if the initial failure to pay is outside the limitation period. And I don't believe the Magistrate's report and recommendation, which the District Court has adopted, is contrary to that. Nonetheless, we'll continue on right now.

Okay. I want to hear from the parties on the fraud issue. Plaintiffs have moved for judgment as a matter of law on Defendants' claims of fraud. And Defendant -- Defendants, rather, have moved affirmatively on their fraud claim.

So what is -- what are the parties' arguments with regard to relief under Rule 50(a) related to the issue of fraud?

MR. BEAR: Thank you, Your Honor.

I think this deals with whether there's substantial evidence within the record to show that Mr. Pfaff formed a fraudulent intent at the time that the contracts were entered into to fraudulently not perform.

The key things that have been cited by Defendants and urged to the contrary as evidence of this fraudulent intent are subsequent actions, sometimes close to a decade removed with the divisive merger and also with regards to royalty payments which are disputed as to whether or not they're due.

In fact, Mr. Pfaff has proffered a reasonable interpretation of the contract. And, therefore, there's nothing within the record to -- to support the idea that at the time of signing the contract, that being in 2005, that Mr. Pfaff actually formed the intent to defraud Mr. Hwang.

You know, I'd also point out Ms. Cooke's argument. I -- I do think that there are some jury issues with -- dealing with subsequent testimony.

But certainly, if that logic holds sound, Your Honor, it should hold sound as to their fraudulent inducement claim because the conduct that they point to is so far removed from the negotiation of the contract so as to vitiate the nexus between the intent formed previously and the subsequent actions.

Additionally, I don't believe that they have actually identified an express statement other than "you'll be hugely rich" which for the reasons we pointed out in the briefing we believe is puffery.

THE COURT: All right. What's Defendants' posture?

MS. SIVINSKI: First is a matter of clarification, Your Honor. I -- I don't believe we have an affirmative Rule 50 motion on the fraud issue. I believe we're just defending their --

THE COURT: All right. I took it that you were

asking the Court to grant judgment as a matter of law that the Plaintiffs had engaged in fraud with regard to Mr. Hwang, but you're not doing that.

MS. SIVINSKI: No, sir.

THE COURT: Okay. Then respond defensively to their motion.

MS. SIVINSKI: Yes, sir.

The case law is clear that while the question is what Mr. Pfaff -- what Plastronics' intent was at the time, Plastronics entered the agreements. Evidence after the negotiation or after the signing of the agreement is relevant.

We have established a chain of events starting in 2006 and extending all the way to the present of Mr. Pfaff telling other people he didn't want to pay, reconstructing his company in a way to make it so that he didn't have to pay royalties. He told Mr. Schubring in 2008 that he didn't want to pay royalties. And he owed royalties starting in 2006 and didn't pay them.

This is sufficient evidence to bring this defense to the jury. The fact that we don't have one single document from Mr. Pfaff from 2005 that says I don't intend to pay royalties is not dispositive of the claim.

Further, the express statements made by Mr. Pfaff fall into two buckets. We've got one that relates to the

non-reoccurring capital costs which the express statements were made very clear in the emails about what he told Mr. Pfaff non-reoccurring capital costs meant.

And then immediately after the agreement was signed, he began calculating royalties in a manner that was inconsistent with his statements about what non-reoccurring capital costs were.

The second bucket is his intent to pay royalties. The express statement, in addition to his statements to Mr. Hwang about you'll be rich, is the one he made in the agreement when he signed an agreement that requires you to pay royalties. A party's agreement or promise to pay royalties with the lack of intent to do so or intent not to do so is sufficient to form the basis of a fraudulent inducement claim or defense, excuse me.

THE COURT: All right. Let's move next to Plaintiffs' motion for judgment as a matter of law with regard to Defendants' claim for damages regarding breach of contract.

What is Plaintiffs' motion regarding Defendants' claim for breach of contract damages?

MR. DEVORA: Thank you, Your Honor.

We move for judgment as a matter of law that defense should not be able to claim damages against Plastronics Socket. They simply don't have a cause of

action or a theory of liability to collect damages from Plastronics Socket.

They even admitted that in their -- in the summary judgment motion briefing that they're abandoning a claim for damages beyond 2014.

During that time, Plastronics H-Pin was a party to the contract. There simply is no claim for damages against Plastronics Socket in this case.

Even in the briefing this morning, they even admit that there is no claim for liability against Plastronics Socket, in which they collect damages on.

Therefore, we move for judgment as a matter of law that Defendants should not be able to claim damages against Plastronics Socket because they don't have a cause of action against Plastronics Socket, Your Honor.

THE COURT: Let me hear from Defendants.

MS. SIVINSKI: Give me one moment, Your Honor. I'm sorry.

THE COURT: Do you have something else to add, Mr. Bear, for Plaintiffs?

MR. BEAR: Yes, Your Honor. And this is probably my bad handwriting to Mr. Devora.

This argument is also directed to what we may have discussed earlier in chambers. I understand the Court's position on this, but just for the record, I wanted to make

it.

We believe there's no evidentiary support for their royalty calculations to include sockets. The report of their damages expert was premised on a theory of liability towards Plastronics Socket Partners. As Mr. Devora just said, Plastronics Socket Partners has no viable theory of liability against it. And, therefore, just for purposes of making a record, we believe that it would be appropriate to grant a JMOL on the subject and limit their damages to what the evidentiary record supports from their damages expert, $106,000.00, Your Honor.

THE COURT: Now I'll hear from Defendants.

MS. SIVINSKI: Yes, Your Honor.

I apologize. I wasn't in chambers this morning when you discussed this issue -- issue, but my understanding from my team is that Your Honor's position was that Plastronics H-Pin stepped into the shoes of Plastronics Socket through the divisive merger.

So even though there is no claim against Plastronics Socket, that does not mean that Plastronics H-Pin cannot be liable for damages based on socket sales.

Based on my understanding of the Court's instructions this morning, JMOL on this claim is not appropriate.

THE COURT: All right. I want to save these

conspiracy issues until the end.

Are there other related requests for relief by either party under Rule 50(a) related to the general area of breach of contract that have not been covered? If there are not, then we'll move on to tortious interference with the business relationship.

MS. COOKE: Not from us, Your Honor.

THE COURT: All right. Plaintiffs move for judgment as a matter of law regarding tortious interference, and Defendants have, as well. So let me hear from both sides on that issue.

What's Plaintiffs' request under Rule 50(a) regarding the subject of --

MR. BEAR: Your Honor --

THE COURT: -- tortious interference?

MR. BEAR: I apologize, Your Honor.

This is related to our previous JMOLs. I believe that given the -- some of the evidence that has come in on the stand, especially an express email of acknowledgement from HighRel that the Distribution Agreement at issue in this case specifically was designed and intended to exclude Plastronics from any type of market of H-Pins and sockets, and that those sales and sockets would be replaced with infringing devices and devices that were in violation of the contract shows tortious action as a matter of law.

Additionally, I believe that PX-922, the concealment of material evidence in relation to the -- to the tortious interference action of which the Defendants in this case participated through, along with HighRel, is sufficient proof of malice, intent, and also a -- a purposefulness that interfering with the business expectancy of -- of Plaintiffs in this regard.

Additionally, there have been damages that have been adduced through the testimony of Mr. Chase Perry, and, therefore, it would be appropriate for the Court in its discretion to grant judgment as a matter of law as to this claim.

THE COURT: What's Defendants' response?

MS. COOKE: I'll just note quickly the scienter evidence that counsel just referenced was related to HiCon USA. HiCon USA is not a Defendant in this case. As we all know, it's HiCon Limited. No evidence has been inserted into the record of any malintent on -- on behalf of HiCon Limited.

That said, I'd like to start off generally with the fact that tortious interference with prospective business relationships is preempted by federal patent law. This is an issue that we have briefed in our bench briefs for Your Honor.

But there is limited case law available on this,

but the few cases that have addressed it, one being which says if a Plaintiff bases its tort in action -- tort actions, excuse me, on conduct that is protected --

THE COURT: Is this the case from the Western District of Pennsylvania?

MS. COOKE: Yes, Your Honor.

THE COURT: I'm familiar with it.

MS. COOKE: Thank you, Your Honor.

So just simply, Your Honor, that -- we contend that the tortious interference claim is based on patent infringement, which is the only theory of tortious interference that Plastronics has pled is preempted by federal patent law.

THE COURT: All right. So in effect, Plaintiffs are asking me to find as a matter of law that tortious interference has occurred with regard to their affirmative claim against Defendants, and Defendants are asking me to find that as a matter of law, the Plaintiffs' claim is preempted and should not be submitted to the jury?

MS. COOKE: That's correct, Your Honor.

THE COURT: Okay.

MS. COOKE: In addition to that, there are other theories that Plastronics appears to be arguing based on other torts beyond patent infringement. We think judgment as a matter of law would be appropriate for those theories.

If I may briefly, Your Honor. Plastronics has alleged, first and foremost, breach of contract -- or tortious interference of prospective business relations.

I'd like to note for the record that the evidence of prospective business relationships for H-Pin, H-Pin only sells its socket. That was testimony that was elicited today.

If H-Pin only has one customer, Plastronics has not shown any loss or interference with a prospective business relationship. So a finding of tortious interference on a prospective business relationship would be insufficient. There is just simply insufficient evidence on it, and a judgment as a matter of law would be appropriate.

There is also no evidence of requisite scienter for the intentional tort. To the extent that Your Honor finds that this claim is not preempted by patent law, the evidence put on in the record shows only that Mr. Hwang thought he was complying with patent law.

There's similarly no conduct that is independently tortious. As we've talked about with respect to patent infringement, we believe those claims should be dismissed as a matter of law.

And, again, on the damages issue we've previously just discussed, but just for the record, Mr. Perry testified only as to damages of H-Pin. Mr. Perry never testified

about any damages for Socket. And, therefore, any claims brought should be dismissed as a matter of law because there are no evidence of damages of H-Pin -- of Socket, excuse me.

Additionally, Your Honor, I have one -- one moment. That's all I have, Your Honor.

THE COURT: All right. There are motions before the Court under Rule 50(a) raised by Defendants regarding three different alleged types of conspiracy, conspiracy to commit patent infringement, conspiracy to commit breach of contract, conspiracy to commit tortious interference with a business relationship.

And additionally, I'll add assisting and encouraging tortious interference.

Let me hear from the parties on these. These are all motions for judgment as a matter of law under Rule 50(a) raised by Defendants. So let me hear from Defendants first on these, and then I'll hear a response from Plaintiffs.

MS. COOKE: Your Honor, with respect to conspiracy to infringe a patent alleged against Mr. Hwang and HiCon Limited, we request judgment as a matter of law, given the Court's instructions in chambers. We believe there is no such thing as a conspiracy to commit patent infringement, and it should be denied -- their claim should be dismissed on that ground.

THE COURT: All right. What about the conspiracy

to commit breach of contract?

MS. COOKE: Similarly, Your Honor, given the instruction in chambers, we would move as a matter of law that there is no such thing as a conspiracy to commit breach of contract, and it should be dismissed, as well.

THE COURT: And what's your position with regard to conspiracy to commit tortious interference?

MS. COOKE: With respect to conspiracy to commit tortious interference, Your Honor, we would propose that this is also preempted by federal patent law. The underlying tort -- tortious interference alleges as patent law. Tortious interference is preempted by that federal patent law, and it follows that conspiracy to commit tortious interference based on patent law would also be preempted.

Notwithstanding if Your Honor finds that preemption is not applicable to conspiracy to commit tortious interference based on patent law, Plastronics has not offered proof of an underlying tort of infringement for the reasons that we've already discussed. And there's no substantial infringement -- evidence of infringement so there can be no evidence of conspiracy.

Also, Your Honor, it's unclear who the two or more persons are that Plastronics allege are the conspirators. Hwang and his DBA are the same person.

Similarly, Hwang is in control of HiCon Limited.

Plastronics can't show two or more persons set out to harm Plastronics because the evidence is clearly to the contrary.

Plastronics offered no evidence of harm or malintent, and there is no evidence that HiCon Limited did or intended any malintent. And simply, Mr. Hwang is the party at issue here, and it would be most difficult to conspire with yourself.

THE COURT: What's the response from Plaintiffs?

MR. BEAR: Your Honor, as to the breach or conspiracy to commit patent infringement, Plaintiffs will not be moving forward with it.

As to the conspiracy to commit breach of contract, Plaintiffs will not be moving forward with it.

So that should reduce the issues before the Court.

THE COURT: You're telling me those claims are withdrawn by the Plaintiffs?

MR. BEAR: Correct.

THE COURT: And abandoned.

MR. BEAR: And we will not be moving to instruct or urging an instruction as to that with regards to the jury tomorrow.

THE COURT: Then I'll consider any claims by Plaintiffs for conspiracy to commit patent infringement or

conspiracy to commit breach of contract to have been abandoned by Plaintiffs per the announcement from Plaintiffs' counsel, and they are no longer live issues in the case.

MR. BEAR: Yes, Your Honor.

THE COURT: Okay. You agree with that?

MR. BEAR: Yes, Your Honor.

THE COURT: Okay.

MR. BEAR: As to conspiracy to commit tortious interference, as to the federal preemption, I think we've argued that, and I just reiterate my arguments as to that.

As to the two or more persons, I believe the testimony today within the court as to Mr. Schubring shows that there is a common purpose and plan or at least that the jury can find substantial evidence of that between Mr. Schubring and Mr. Dong Hwang that shows a purposeful and intent to frustrate the business expectancy of Plaintiffs. Specifically there has been evidence within the record to establish it.

And I understand that it has been discussed that that is -- can be a high bar, but I would summarize the evidence as follows, Your Honor: You may recall that Mr. Schubring, on the stand, admitted that when that relationship and that agreement between them and -- that started with the Distribution Agreement, Mr. Schubring was

intimately aware of the contracts at issue and the patent issues that might arise.

Additionally, Mr. Hwang candidly in an email, which Ms. Cooke urged should take precedence as far as credibility in a previous argument regarding the parol evidence shows that Mr. Hwang was aware of the patent issues and said, who will care. That's very significant as far as an evidentiary piece.

Additionally, Your Honor, I believe that the act of concealment to preclude the discovery of evidence that might be used in this very lawsuit, which was PX-922, which was directed by Mr. Hwang to HiCon USA personnel, including Mr. Schubring, shows conscious disregard of that.

Additionally, we have an admission from within that email of Mr. Gordon Cowan, Mr. Schubring's boss, with the words, be bold, courageous, and unrelenting, which shows very much an intent to be unrelenting and frustrate the business of Plaintiffs.

It is a difficult thing to prove, but, Your Honor, I believe we have the evidence in the record to instruct the jury on this, and indeed, if the Court was so inclined, to grant our JMOL as a matter of law as to tortious interference and also to instruct the jury on a conspiracy charge regarding the same.

THE COURT: Let me ask you this, Mr. Bear.

MR. BEAR: Yes.

THE COURT: For the Court's benefit, with regard to any claim of conspiracy to commit tortious interference, who do you assert the conspiracy to be between? Who are the acting parties in such a conspiracy?

MR. BEAR: HiCon Co. Limited, Your Honor, Mr. Hwang additionally, J.T. Kwon, an officer of HiCon Co. Limited, who was on that email, the 9/22 email, J.B. Hwang who was also on the email and relayed his father's orders to remove material from BiTS Conference in response to this lawsuit, Mr. Paul Schubring, Mr. Gordon Cowan in order to frustrate the business expectancy that Plastronics has enjoyed for 23 years with HighRel and -- HighRel Company, Your Honor.

THE COURT: So you're not telling me that the conspiracy theory that you have regarding tortious interference is limited to a potential conspiracy between Mr. Hwang and Mr. Hwang doing business as HiCon Company.

MR. BEAR: I believe so, Your Honor. Let me check with Mr. Devora for a second.

THE COURT: Because, quite honestly, I don't see any way that an individual can conspire with themselves as a sole proprietor.

MR. BEAR: I think that's a fair proposition, Your Honor.

THE COURT: Are you asserting a conspiracy with regard to commission of tortious interference between Mr. Hwang and HiCon USA?

MR. BEAR: Yes, Your Honor.

THE COURT: Okay. All right. Defendants have also raised an issue under Rule 50(a) with regard to assisting and encouraging tortious interference. I don't believe that's been covered yet.

What's Defendants' request for relief under Rule 50(a) in this regard?

MS. COOKE: Your Honor, we're aware of the conversations that occurred in chambers on the issue of assisting and encouraging. We just want to reiterate for the record that assisting and encouraging is not something that has currently been adopted under Texas law.

Even to the extent the courts have adopted it in other jurisdictions, they have applied a very high scienter application. Generally, it's a highly dangerous conduct and activities, like street racing, that is applicable to a claim of assisting and encouraging. And, again, this is assisting and encouraging tortious interference.

And here we're talking about patent infringement. Assisting and encouraging tortious interference based on patent infringement, which is highly, highly unlikely, if not impossible, to rise to the level of a highly dangerous

conduct that would fall within the scope of assisting and encouraging to the extent Your Honor finds that it does, in fact, fall within the scope of Texas law.

THE COURT: What's Plaintiffs' posture on this issue?

MR. BEAR: Your Honor, I would reiterate our arguments on this. I do believe that there has been a high showing of this.

In addition to the patent infringement, I believe we've elicited testimony that there may have been sabotage in the -- in the effort to conceal the underlying purpose, which was to commit patent infringement and also other wrongful acts.

And so I think we've met that burden. I believe that there is sufficient -- you know, Defendants have not cited any law that says that this is not a viable action under Texas law. And, therefore, I think it'd be appropriate to instruct the jury regarding the same.

THE COURT: All right.

MS. COOKE: If I may briefly, Your Honor?

THE COURT: Very briefly.

MS. COOKE: We would also propose that because assisting and encouraging is based on tortious interference for patent infringement, it would similarly be preempted by federal patent law.

THE COURT: I thought that's what you were going to say.

Okay. The Court's going to reserve the issue of attorneys' fees. If there's a finding by the jury of breach of contract or another statutory basis for an award for attorneys' fees, I'll take that up post-verdict.

The last issue I have before me, at least from my list, counsel, of what's been raised under the specter of relief under Rule 50(a) is the issue of exemplary -- exemplary damages raised by Defendants.

I assume that relates to the assertions of tortious interference. Let me hear briefly from Defendants on this.

MS. COOKE: Yes, Your Honor, that's correct.

We would move as a -- for a motion as a matter of law -- or judgment as a matter of law that the only supportive claim is tortious interference. Plastronics can't show tortious interference for the reasons we've already described, and, therefore, there is no basis for exemplary damages.

As with willful infringement, we've already discussed the statutory standard is malice, which requires a showing of spite or will, which is clearly not the case here based on the testimony of Mr. Hwang and Mr. Schubring, who I would like to note for the record that he would never do

anything intentionally to commit patent infringement.

Not a single line of evidence supports a finding of intent to tortiously interfere on the basis of patent infringement, and, therefore, an award of exemplary damages would be improper.

THE COURT: What's the response from Plaintiffs?

MR. BEAR: Your Honor, I would reemphasize PX-922. I would -- I understand that that was the testimony of Mr. Schubring, but he was vigorously cross-examined as to it.

You know, as far as malice, you know, the -- the Defendants went out of their way to put into the record the numerous times that Mr. Hwang asked and requested and demanded consent from Mr. Pfaff, and Mr. Pfaff properly, as is his right under the contract, did not grant such consent.

Therefore, I think that there is substantial evidence that a jury could infer that Mr. Hwang did form an intent to actually injure the business of Plastronics with a common scheme with Mr. Schubring who was previously fired by Plastronics.

The conduct of those emails with intentionality, with knowledge of the patent rights, was the very first thing out of Mr. Schubring's email to Mr. Hwang referring to the patent issues with David, Mr. Pfaff.

In addition, the act of concealment of evidence in

this case, as shown in that email, as ordered by Mr. Hwang, is all consistent with malice and intent.

Additionally, Your Honor, I think that there is sufficient evidence of the tortious interference with a 23-year business expectancy and relationship. It's sufficient for the jury to hear this evidence, to get that instruction, because they can find clear and convincing evidence in that regard.

THE COURT: All right. Well, are there any issues or requests for relief from either party under Rule 50(a) that the Court has not heard from you on?

MR. DEVORA: Nothing further, Your Honor.

THE COURT: Anything further from the Defendants?

MS. COOKE: Nothing further, Your Honor.

THE COURT: Okay. All right, counsel. As I said earlier, the Court's going to reserve the right to address these issues in a considered and fulsome opinion at a later date to be issued setting forth both the authorities the Court believes are applicable and the analysis that leads the Court to reach the conclusions that it is reaching.

However, given our posture, the parties need to know the Court's ultimate position on these matters, and I'm going to give you that in the record now.

With regard to the issue of direct patent infringement, requests from either party under Rule 50(a)

are denied.

With regard to requests for relief under 50(a) concerning personal jurisdiction of HiCon Limited, that request for relief under Rule 50(a) is denied.

With regard to the issue of indirect patent infringement, I will grant the JMOL that there can be no indirect infringement by the individual acts of Mr. Hwang both in his personal and individual capacity and in his posture as a sole proprietorship.

Otherwise, I will deny the request for relief under Rule 50(a) regarding the issue of indirect infringement.

I will, however, grant relief under Rule 50(a) as to the issue of contributory infringement. I see no basis for that.

With regard to the issue of willful patent infringement, that's denied.

With regard to the requests for relief from both parties as to the issue of patent exhaustion under Rule 50(a), that is denied.

With regard to the issue of injunctive relief raised by Defendants, the Court is going to grant Defendants' motion under Rule 50(a) that injunctive relief does not lie in this case given the request for compensatory damages which form the basis of the lengthy damages case put

on by Plaintiffs, as well as the damages relief requested by Defendants.

I see no basis for a grant of injunctive relief. The harms complained of by Plaintiff, they have clearly sought to be compensated for with the money judgment, and, therefore, I see no basis to find that the harms, if established, as asserted by Plaintiffs, would support a finding of irreparable harm that's necessary to grant injunctive relief.

So the issue of injunctive relief is granted.

With regard to any claim under Section 285 of the Patent Act, I believe the parties have made it clear that they don't believe that's appropriate at the 50(a) stage and did not mean to raise it, even though it's been discussed with the Court.

To the extent it's been raised, it's not going to be granted at the 50(a) stage, but it's clear in the Court's mind, and I want to make it clear to the parties, that after a verdict is returned, the Court will entertain an appropriate motion under Section 285 for exceptional case status if either party believes that's proper.

With regard to the Defendants' motion for relief under Rule 50(a) regarding patent damages, I will grant the motion as to all non-U.S. sales, but I will deny it as to all domestic U.S. sales.

With regard to the asserted breach of contract claims by the Plaintiff, the Plaintiffs' motion for judgment as a matter of law establishing their claims for breach of contract is denied.

The Defendants' motion for judgment as a matter of law thwarting the claims of breach of contract asserted by Plaintiff are denied. That issue will go to the jury.

The Court does find that the failure to make periodic payments where the first failure occurs more than four years in advance of filing suit can be recovered when the periodic payments that are subsequently unpaid come due and should have been periodically paid within four years of the time the suit was filed.

So as to the statute of limitations argument raised by Defendants, any periodic payment that was due and should have been, in the ordinary course of business, paid more than four years from the date the sued was filed will be barred and excluded.

Any periodic payment that would have been paid in the ordinary course of business within four years from the time the suit is filed is a live claim for damages under a breach-of-contract theory and is not barred by limitations.

With regard to the issue of fraud, the Plaintiffs' motion under Rule 50(a) to foreclose that issue is denied, and the issue will be submitted to the jury.

With regard to the Defendants' claim regarding damages from the Plaintiff for breach of contract, I will grant the motion for relief under Rule 50(a) foreclosing a recovery of breach-of-contract damages against Plastronics Socket -- is it Partners, PSP?

MR. BEAR: Yes, Your Honor.

THE COURT: But I will deny that claim as to Plastronics H-Pin -- or I'll deny that relief as to Plastronics H-Pin.

It is the Court's view that the subsequent corporate realignment post the entering of the contract cannot serve as a shield with regard to Plastronics H-Pin, and they can potentially be liable for those sales that would have occurred but for -- would have occurred under the contract and unrelated to the subsequent corporate realignment or restructuring.

With regard to tortious interference, the Plaintiffs' request for relief under Rule 50(a) that tortious interference has been established as a matter of law against the Defendants is denied.

And with regard to the Defendants' claim that the issue of tortious interference is preempted and cannot be properly brought before this jury or this Court in the current posture is also denied.

With regard to conspiracy to commit patent

infringement and conspiracy to commit breach of contract, the Plaintiffs have abandoned those earlier claims, and they're no longer live before the Court.

With regard to the claim by Plaintiffs against Defendants that they're liable for conspiracy to commit tortious interference -- excuse me -- I believe that's the Defendants' motion to foreclose any recovery by Plaintiffs on their claim of conspiracy to commit tortious interference, I'll grant that as to any conspiracy that would have existed solely between Mr. Hwang individually and Mr. Hwang DBA HiCon, the sole proprietorship.

Otherwise, as to potential conspiracy to commit tortious interference, that would have existed between other co-conspirators, the motion by Defendants to foreclose and prevent any recovery for conspiracy to commit tortious interference is denied, including Defendants' argument that it's preempted.

With regard to the claim by Plaintiffs that Defendants are liable for assisting and encouraging tortious interference, there is some question as to whether Texas has adopted that doctrine.

There's authority that does say, if the Court were to, it would require an exceptionally high level of harmful conduct to the broader public, and the Court finds that no reasonable jury could conclude that that kind of conduct has

occurred between these parties under these facts in this case, and I will grant the Defendants' motion for relief under Rule 50(a) regarding Plaintiffs' assertion of assisting and encouraging tortious interference.

With regard to Defendants' motion to foreclose any possible recovery of exemplary damages with regard to tortious interference, that motion is denied.

With regard to the Defendants' motion for relief under Rule 50(a) regarding contractual attorneys' fees, I've indicated that I would effectively reserve that. I think, procedurally, I have to deny the motion under Rule 50(a), and procedurally, for that purpose, I'm going to deny formally any request for relief under Rule 50(a) raised by Defendants concerning the issue of contractual attorneys' fees or attorneys' fees related to breach of contract.

Now, are there any other issues raised by either party under Rule 50(a) that you do not believe have been covered by the guidance and rulings I've given you from the bench?

MR. BEAR: From Plaintiffs, no, Your Honor. We thank the Court for its indulgence and this late hour.

THE COURT: Defendants, are you aware of anything that's been overlooked?

MS. SIVINSKI: Your Honor, I would just like clarification on one of your rulings. With respect to this

statute of limitation, I think I understood Your Honor's ruling to be relative to a claim of unpaid royalties.

My understanding from the dispositive motions is the Plaintiffs no longer have a claim for unpaid royalties, and the claim, based on the Korean patent is a claim based on the breach of a license or transfer provision. So I just wanted to make sure that I was clear.

THE COURT: With regard to any attempt at recovery by the Plaintiffs against the Defendants for breach of contract, if that theory of breach of contract anticipates or is based upon a series of periodic payments, the failure to make one or more of those payments outside the four-year statute of limitations does not, in the Court's view, bar the potential recovery of periodic payments that would have been due otherwise during and within the four-year statute of limitations.

So to that extent, the Defendants' motion under Rule 50(a) is denied.

Is that clear?

MS. SIVINSKI: Yes. I just wanted to clarify that there's no remaining claim for unpaid royalties.

THE COURT: Whether we call it a claim for royalties or whether we call it a claim for breach of contract, if it is a contractual obligation that would have been paid in the ordinary course within four years of the

time the suit was filed, the Court finds it's not barred by the statute of limitations.

Understood?

MS. SIVINSKI: Not really, but I appreciate your -- the Court's indulgence on that.

THE COURT: Well, I will do my best to see that whatever resulting charge to the jury and verdict form comports with these rulings under Rule 50(a).

MS. SIVINSKI: Thank you, Your Honor.

THE COURT: All right. That completes motions under Rule 50(a) from both Plaintiffs and Defendants.

It is 6:33. Where are we, Mr. Bunt, on the submission of updated and proposed -- jointly updated and proposed jury instructions and verdict form?

MR. BUNT: Your Honor, we are about to forward to your clerks the joint proposed verdict forms, which we sent out our revisions to the Defendants' proposal a few hours ago, and we are also going to be attaching a revised version of the mutually proposed jury instructions.

And I want to point out that the Defendants have not had a chance to see that because we literally have just finished editing it. I believe Mr. Devora told you earlier about the issue about not having a Word document and going back and forth between a PDF.

I'm not positive that we have captured all the

most recent changes from the Defendants, but we have tried to make sure that wherever they had anything that they wanted, it's captured in their color, and ours is captured in our color, and where there appears to have been an agreement, we have put that in black print so it's all designated for the Court to see.

So that -- that's where we are, and we'll be emailing that very shortly.

THE COURT: Well, while I have counsel for both sides here before me, here's what I'm going to do in that regard.

I'm going to order both sides to continue their late efforts to meet and confer and generate an updated and current jointly submitted proposal with regard to final jury instructions from the Court to the jury and a verdict form to be submitted to the jury until 8:00 p.m. this evening.

And at 8:00 p.m. this evening, no matter what, no excuses, drop dead time table, that's to be forwarded -- whatever it is and whatever is stated, it's to be forwarded to the Court in care of my law clerks at 8:00 p.m. this evening.

MR. BUNT: Understood, Your Honor.

THE COURT: Defendants understand?

MS. MCCOMAS: Yes, Your Honor.

THE COURT: Okay. Use the time between now and

then effectively, please. And then we will take up the informal charge conference in the morning.

I'll be in chambers by 7:30, against the prospect that there might be disputes concerning demonstratives to be used in closing argument, but at sometime tomorrow morning, I'll convene an informal charge conference.

Counsel should be available to the Court at or around 7:30, and I will give you an idea about when I anticipate beginning that informal charge conference, after which, as I've indicated earlier, I'll take your comments and suggested changes into account, generate what I believe is the proper and appropriate final jury charge and verdict form, give it to you, allow you an opportunity to review it, and then conduct a formal charge conference on the record.

I would anticipate, for the benefit of your co-counsel who are not here, that if we are fortunate and all work together, before noon tomorrow, I should be in a position to charge the jury, let the parties present their closing arguments, and then give the case to the jury, all right?

Any questions?

MS. MCCOMAS: No, Your Honor.

MR. BUNT: No, Your -- oh, one more question, Your Honor. You said before noon. Do you anticipate charging the jury before noon and then them taking a lunch break and

then arguing?

THE COURT: Well, it depends on what we get done in the morning.

MR. BUNT: Okay.

THE COURT: We all need to work as hard as we can.

MR. BUNT: Yes, Your Honor.

THE COURT: Okay. With those rulings and instructions, the Court stands in recess until tomorrow morning.

COURT SECURITY OFFICER: All rise.

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/Shelly Holmes 7/10/19
SHELLY HOLMES, CSR, TCRR Date
OFFICIAL COURT REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20